

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1018

INTRODUCER: Criminal Justice Committee and Senator Stewart

SUBJECT: Exposure of Sexual Organs

DATE: February 18, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1018 amends s. 800.03, F.S., increasing the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent offense of exposing or exhibiting one's s sexual organs in a vulgar or indecent manner while in public or on or in view of the private premises of another.

Additionally, this bill provides that exposing of sexual organs by a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.

This bill amends s. 901.15, F.S., adding the crime of exposure of sexual organs to the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

The Criminal Justice Impact Conference estimates this bill will have a "positive indeterminate" prison bed impact (unquantifiable increase in prison bed impact). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

## II. Present Situation:

### Exposure of sexual organs

At common law, indecent exposure was a public nuisance and punishable as a misdemeanor.<sup>1</sup> “Section 800.03, Florida Statutes [...] represents Florida’s effort at supplanting the common law offense.”<sup>2</sup>

Section 800.03, F.S., provides that it is unlawful for a person to expose or exhibit his or her sexual organs in a vulgar or indecent manner while in public or private view, or to be naked except in any place provided or set apart for that purpose. A mother who is breastfeeding does not violate this section “under any circumstances.” A violation of this section is a misdemeanor of the first degree.<sup>3</sup>

Courts have consistently held that being naked alone is not sufficient to violate s. 800.03, F.S. To trigger a violation, there must also be a “lascivious” exhibition of the sexual organs.<sup>4</sup> The terms “lascivious,” “lewd,” and “indecent” have been interpreted by the Florida Supreme Court to be synonymous and mean wicked, lustful, unchaste, licentious, or sensual design by the perpetrator.<sup>5</sup> To violate s. 800.03, F.S., actions must involve “an unlawful indulgence in lust, eager for sexual indulgence.”<sup>6</sup> Because nudity alone is not a violation of s. 800.03, F.S., some counties have enacted county ordinances which specifically address public nudity.<sup>7</sup> Similarly, the Department of Environmental Protection has enacted a rule that specifically prohibits nudity in parks.<sup>8</sup> These local ordinances or rules further restrict nudity in their respective jurisdictions.

Courts have also made a distinction between conduct that occurs in public and conduct that occurs in a private place. If the exposure occurs in a private place, evidence must be provided that someone was offended by the conduct.<sup>9</sup>

Similar conduct, when done in the presence of a person younger than 16, is currently a felony. Section 800.04(7), F.S., provides that a person who intentionally masturbates, intentionally exposes his or her genitals in a lewd or lascivious manner, or intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, and the victim is younger than 16 years old, commits:

- A second degree felony,<sup>10</sup> if the person is 18 years of age or older.

<sup>1</sup> 3 Wharton's Criminal Law s 317 (Torcia, C., 14th ed. 1980).

<sup>2</sup> *Duvallon v. State*, 404 So. 2d 196, 196-97 (Fla. 1<sup>st</sup> DCA 1981).

<sup>3</sup> A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

<sup>4</sup> See *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA, 1984); *Duvallon v. State*, 404 So. 2d 196 (Fla. 1st DCA, 1981).

<sup>5</sup> *Boles v. State*, 27 So. 2d 293, 294 (Fla. 1946); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA 1984).

<sup>6</sup> *Duvallon*, 404 So. 2d at 197 (quoting *Chesebrough v. State*, 255 So.2d 675, at 677, 678 (Fla.1971)).

<sup>7</sup> Brevard County, Florida, Municipal Code art. II., s. 74-30.

<sup>8</sup> Rule 62D-2.014(7)(a), F.A.C., states that in every area of a park including bathing areas no individual shall expose the human, male or female genitals, pubic area, the entire buttocks or female breast below the top of the nipple, with less than fully opaque covering.

<sup>9</sup> *State v. Kees*, 919 So. 2d 504, 506-07 (Fla. 5th DCA 2005).

<sup>10</sup> A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

- A third degree felony,<sup>11</sup> if the person is younger than 18 years of age.

### **Arrest without an Arrest Warrant**

Section 901.15, F.S., provides the circumstances in which a law enforcement officer may conduct a warrantless arrest. Generally, a law enforcement officer may arrest a person without an arrest warrant when:

- The person has committed a felony or misdemeanor or violated a local ordinance in the officer's presence; however, the arrest for a misdemeanor or local ordinance must be made immediately or in fresh pursuit;
- A felony has been committed and the officer reasonably believes the person committed it;
- The officer reasonably believes that a felony has been or is being committed and that the person has committed or is committing it; and
- A warrant for the arrest has been issued and is held by another officer for execution.<sup>12</sup>

However, there are many exceptions to these general rules. A law enforcement officer may make an arrest, where there is probable cause<sup>13</sup> to believe that a person has committed one of the following offenses:

- Violations of injunctions for protection against domestic violence, dating violence, sexual violence, repeat violence, exploitation of a vulnerable adult or a foreign protection order;<sup>14</sup>
- Acts of domestic violence or dating violence;<sup>15</sup>
- Child abuse or luring or enticing a child for unlawful purposes;<sup>16</sup>
- Battery;<sup>17</sup>
- Criminal mischief or graffiti-related offenses;<sup>18</sup>
- Violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone;<sup>19</sup>
- Racing violation as described in s. 316.191(2), F.S.;<sup>20</sup>
- An act that violates a condition of pretrial release when the original arrest was for an act of domestic violence or dating violence;<sup>21</sup>
- Trespass in a posted secure area of an airport;<sup>22</sup>

<sup>11</sup> A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>12</sup> Section 901.15(1), (2), (3), and (4), F.S. Also, a law enforcement officer who witnesses a violation of ch. 316, F.S. (State Uniform Traffic Control), may relay that information to another officer who can then make the arrest when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer. Section 901.15(5), F.S.

<sup>13</sup> Probable cause to arrest is not to be equated with the standards of conclusiveness and probability required upon which a conviction must be based. *State v. Outten*, 206 So. 2d 392 (Fla.1968); Arrests are made upon probable cause or a reasonable ground for belief, not proof beyond a reasonable doubt. *Hall v. State*, 219 So. 2d 757 (Fla. 3d DCA 1969).

<sup>14</sup> Section 901.15(6), F.S.

<sup>15</sup> Section 901.15(7), F.S.

<sup>16</sup> Section 901.15(8), F.S.

<sup>17</sup> Section 901.15(9), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Section 901.15(13), F.S.

<sup>22</sup> Section 901.15(14), F.S.

- Assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other officers specified in s. 784.07, F.S., who is engaged in the lawful performance of his or her duties;<sup>23</sup>
- Assault or battery upon an employee of a receiving facility as defined in s. 394.455(39), F.S., who is engaged in the lawful performance of his or her duties;<sup>24</sup> and
- A criminal act of cyberharassment as described in s. 784.049, F.S.<sup>25</sup>

### III. Effect of Proposed Changes:

This bill amends s. 800.03, F.S., increasing the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent offense of exposing or exhibiting one's sexual organs in a vulgar or indecent manner while in public or on or in view of the private premises of another.

This bill removes the current statutory language, "or to be naked in public except in any place provided or set apart for that purpose." The removal of this language is consistent with the Florida Supreme Court's interpretation of the statute that mere nudity is not a violation of s. 800.03, F.S.<sup>26</sup>

Additionally, this bill provides that exposing of sexual organs by a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.

This bill amends s. 901.15, F.S., adding the crime of exposure of sexual organs to the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

This bill is effective October 1, 2020

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>23</sup> Section 901.15(15), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 901.15(16), F.S.

<sup>26</sup> *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates this bill will have a “positive indeterminate” prison bed impact (unquantifiable increase in prison bed impact).<sup>27</sup>

The CJIC provides the following information relevant to its estimate:<sup>28</sup>

Per [Florida Department of Law Enforcement], in FY 18-19, 720 people were arrested under s. 800.03, F.S., with 283 guilty/convicted and 76 having adjudication withheld. It is not known how many of these people were exhibiting sexual organs in a vulgar or indecent manner, nor is it known how many were naked in public.

In FY 17-18, the incarceration rate for a Level 1, 3rd degree felony was 8.7%.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>27</sup> CJIC SB 1018-Exposure of Sexual Organs (Identical HB 675), January 27, 2020, on file with the Senate Committee on Criminal Justice.

<sup>28</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 800.03 and 901.15.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on February 4, 2020:**

The committee substitute:

- Makes a second or subsequent violation of s. 800.03, F.S., a third degree felony.
- This bill removes the language, “or to be naked in public except in any place provided or set apart for that purpose.” The removal of this language is consistent with the Florida Supreme Court’s interpretation of the statute that mere nudity is not a violation of s. 800.03, F.S.<sup>29</sup>
- Provides that exposing of sexual organs by a mother breastfeeding her baby, a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.
- Amends s. 901.15, F.S., to add the crime of exposure of sexual organs, contrary to s. 800.03, F.S., the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

- B. **Amendments:**

None.

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

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<sup>29</sup> *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971).