

**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 Criminal Justice

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BILL: SB 1018

INTRODUCER: Senator Stewart

SUBJECT: Exposure of Sexual Organs

DATE: January 27, 2020

REVISED: 02/03/20

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

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

Additionally, this bill makes being naked in public, except in any place provided or set apart for that purpose, a first degree misdemeanor. The language in the bill maintains that a mother who is breastfeeding does not violate this section.

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**

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. A violation of this section is a misdemeanor of the first degree.<sup>1</sup>

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<sup>1</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.

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>2</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>3</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>4</sup> Similarly, the Department of Environmental Protection has enacted a rule that specifically prohibits nudity in parks.<sup>5</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>6</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>7</sup> if the person is 18 years of age or older.
- A third degree felony,<sup>8</sup> if the person is younger than 18 years of age.

### 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 exposing or exhibiting one’s s sexual organs in a vulgar or indecent manner while in public or private view.

Additionally, this bill makes it a first degree misdemeanor to be naked in public, except in any place provided or set apart for that purpose.

The language in the bill maintains that a mother who is breastfeeding does not violate this section.

This bill is effective October 1, 2020.

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<sup>2</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>3</sup> *Boles v. State*, 27 So. 2d 293, 294 (Fla. 1946); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA 1984).

<sup>4</sup> Brevard County, Florida, Municipal Code art. II., s. 74-30.

<sup>5</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>6</sup> *State v. Kees*, 919 So. 2d 504, 506-07 (Fla. 5th DCA 2005).

<sup>7</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.

<sup>8</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.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## 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>9</sup>

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<sup>9</sup> CJIC SB 1018-Exposure of Sexual Organs (Identical HB 675), January 27, 2020, on file with the Senate Committee on Criminal Justice.

The Legislature's Office of Economic and Demographic Research (EDR) provides the following information relevant to its estimate:<sup>10</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.

**VIII. Statutes Affected:**

This bill substantially amends section 800.03 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.

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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>10</sup> *Id.*