

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 Rules

BILL: CS/SB 444

INTRODUCER: Children, Families, and Elder Affairs Committee; Senators Perry and Book

SUBJECT: Lewd or Lascivious Molestation

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
3.	<u>Stokes</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 444 creates s. 800.06, F.S., which provides for the new crime of lewd or lascivious molestation committed upon persons 16 years of age or older. A person commits this crime when he or she:

- Intentionally touches a person 16 years of age or older:
 - Against his or her will; and
 - In a lewd or lascivious manner, on the breasts, genitals, genital area, or buttocks, or on the clothing covering them; or
- Forces a person 16 years of age or older to touch the perpetrator, in a lewd or lascivious manner, on the breasts, genitals, genital area, or buttocks, or the clothing covering them.

A violation of this section is a first degree misdemeanor. The offense is reclassified to a third degree felony when a person commits a second or subsequent violation when he or she has one prior conviction for lewd or lascivious molestation.

This bill may have a positive indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2022.

II. Present Situation:

Unlawful Touching

Various sections of the Florida Statutes criminalize specified types of physical contact with others. While certain types of intentional contact on a person under the age of 16 may be a felony lewd or lascivious molestation, the same contact on a person 16 years of age or older may be a misdemeanor simple battery.

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.¹

The terms “lewd” and “lascivious” are not defined in statute, but are commonly understood by the courts. The Supreme Court of Florida has found that these terms are in common use, and the plain meaning of the words gives notice as to what conduct is prohibited. The court further stated that the words lewd and lascivious “are synonyms and connote wicked, lustful, unchaste, licentious, or sensual design on the part of the perpetrator.”²

An offender 18 years of age or older who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a life felony.³
- Twelve years of age or older but less than 16 years of age, commits a second degree felony.⁴
- Twelve years of age or older but less than 16 years of age and the person was previously convicted of specified offenses,⁵ commits a first degree felony.⁶

¹ Section 800.04(5)(a), F.S.

² *Chesebrough v. State*, 255 So. 2d 675, 677 (Fla. 1971).

³ Section 800.04(5)(b), F.S. A life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years. Section 775.082, F.S.

⁴ Section 800.04(5)(c)2., F.S. 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.

⁵ Section 800.04(5)(e)1.-7., F.S., provides the following specified offenses: Kidnapping under s. 787.01(2) F.S., or False Imprisonment under s. 787.02(2), F.S., when the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed against the minor a sexual battery under ch. 794, F.S., or a lewd act under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; Kidnapping under s. 787.01(3)(a)2. or 3., F.S., and in the course of committing the kidnapping committed a sexual battery under ch. 794, F.S., or a lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct or lewd or lascivious exhibition under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; False Imprisonment under s. 787.02(3)(a)2. or 3., F.S., and in the course of committing the false imprisonment committed a sexual battery under ch. 794, F.S., or a lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct or lewd or lascivious exhibition under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; Sexual Battery under ch. 794, F.S., excluding s. 794.011(10), F.S.; Lewd or Lascivious offenses committed against or in the presence of an elderly or disabled person under s. 825.1025, F.S.; Computer Pornography Transmission under s. 847.0135(5), F.S.; or Lewd or Lascivious offenses under s. 800.04, F.S.

⁶ Section 800.04(5)(e), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Section 775.082, F.S.

An offender less than 18 years of age who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a second degree felony.⁷
- Twelve years of age or older but less than 16 years of age, commits a third degree felony.⁸

The crime of lewd or lascivious molestation does not apply if a victim is 16 years of age or older. Under current law, a person who commits a lewd and lascivious molestation of a person 16 years of age or older may be charged with the first degree misdemeanor⁹ crime of battery if the touching was against the will of the victim.

Battery

A person commits the first degree misdemeanor of battery when he or she:

- Actually and intentionally touches or strikes another person against the will of the other; or
- Intentionally causes bodily harm to another person.¹⁰

The courts have consistently held that any intentional touching, no matter how slight, is sufficient to constitute a simple battery. The force used in the commission of a battery need not be sufficient to cause injury, and may be committed with nominal contact.¹¹

A person who has a prior conviction for battery, aggravated battery,¹² or felony battery¹³ and commits any second or subsequent battery commits a third degree felony.¹⁴ Additionally, it is a third degree felony to commit a domestic battery by strangulation,¹⁵ a battery in furtherance of a

⁷ Section 800.04(5)(c)1., F.S.

⁸ Section 800.04(5)(d), F.S. 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.

⁹ 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.

¹⁰ Section 784.03(1), F.S.

¹¹ *State v. Hearn*, 961 So. 2d 211, 218-19 (Fla. 2007).

¹² Section 784.045, F.S., provides that a person commits aggravated battery, who, in committing battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Additionally, a person commits aggravated battery if the victim was pregnant at the time of the offense and the offender knew or should have known the victim was pregnant.

¹³ Section 784.041, F.S., provides that a person commits felony battery if he or she actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.

¹⁴ Section 784.03(2), F.S.

¹⁵ Section 784.041(2), F.S., provides that a person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. This paragraph does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.

riot,¹⁶ or aggravated riot,¹⁷ or a battery on specified persons engaged in the lawful performance of duties.¹⁸

The crime of battery may also be reclassified as a higher level offense if committed on certain persons, or on specified persons engaged in the lawful performance of duties.¹⁹

III. Effect of Proposed Changes:

This bill creates s. 800.06, F.S., which provides for the new crime of lewd or lascivious molestation committed upon persons 16 years of age or older. A person commits this crime when he or she:

- Intentionally touches a person 16 years of age or older:
 - Against his or her will; and
 - In a lewd or lascivious manner, on the breasts, genitals, genital area, or buttocks, or on the clothing covering them; or
- Forces a person 16 years of age or older to touch the perpetrator, in a lewd or lascivious manner, on the breasts, genitals, genital area, or buttocks, or the clothing covering them.

A violation of this section is a first degree misdemeanor. The offense is reclassified to a third degree felony when a person commits a second or subsequent violation when he or she has one prior conviction for lewd or lascivious molestation.

¹⁶ Section 870.01(2), F.S., provides that a person commits a riot if he or she willfully participates in a violent public disturbance involving an assembly of three or more persons, acting with a common intent to assist each other in violent and disorderly conduct, resulting in: injury to another person; damage to property; or imminent danger of injury to another person or damage to property.

¹⁷ Section 870.01(3), F.S., provides that a person commits aggravated rioting if, in the course of committing a riot, he or she: participates with 25 or more other persons; causes great bodily harm to a person not participating in the riot; causes property damage in excess of \$5,000; displays, uses, threatens to use, or attempts to use a deadly weapon; or by force, or threat of force, endangers the safe movement of a vehicle traveling on a public street, highway, or road.

¹⁸ Battery on detention or commitment facility staff or a juvenile probation officer (s. 784.075, F.S.); Battery on health services personnel (s. 784.076, F.S.); or Battery of a facility employee by throwing, tossing, or expelling certain fluids or materials (s. 784.078, F.S.).

¹⁹ The following battery offenses are reclassified from a first degree misdemeanor to a third degree felony, including battery on a: law enforcement officer; firefighter; emergency medical care provider, railroad special officer, traffic accident investigations officer, nonsworn law enforcement agency employee who is certified as an agency inspector, blood alcohol analyst, or breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, law enforcement explorer, traffic infraction enforcement officer, parking enforcement specialist, certain persons licensed as security officers, or security officer employed by the board of trustees of a community college while such person is engaged in the lawful performance of his or her duties (s. 784.07, F.S.); sexually violent predators detention or commit facility staff (s. 784.074, F.S.); person 65 years or older (s. 784.08, F.S.); elected official or employee of a: school district, a private school, the Florida School for the Deaf and the Blind, university lab school, a state university or any other entity of the state system of public education, as defined in s. 1000.04, F.S., sports official, an employee or protective investigator of the Department of Children and Families, employee of a lead community-based provider and its direct service contract providers, or an employee of the Department of Health or its direct service contract providers, when the person committing the offense knows or has reason to know the identity or position or employment of the victim (s. 784.081, F.S.); visitor to the detention facility or upon any other detainee in the detention facility, whenever a person who is being detained in a prison, jail, or other detention facility commits the battery (s. 784.082, F.S.); or a code inspector, as defined in s. 162.04(2), F.S., while the code inspector is engaged in the lawful performance of his or her duties and when the person committing the offense knows or has reason to know the identity or employment of the victim (s. 784.083, F.S.).

This bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 Office of Economic and Demographic Research's preliminary estimate provides that the bill has a positive indeterminate fiscal impact.

This bill creates s. 800.06, F.S., adding a 1st degree misdemeanor for someone who "commits the crime of lewd or lascivious molestation upon a person 16 years of age or older," with definitions applied for this act. A second or subsequent violation would be an unranked, 3rd [degree] felony (Level 1 by default).²⁰

Per FDLE, in FY 2018-19, there were 125 people arrested for the second degree misdemeanors of lewd and lascivious behavior (s. 798.02, F.S.) and unnatural and

²⁰ The Office of Economic and Demographic Research, Preliminary Estimate, SB 444-Lewd or Lascivious Molestation (Identical HB 379)(on file with the Senate Criminal Justice Committee).

lascivious act (s. 800.02, F.S.). In FY 19-20, there were 63 people arrested, and in FY 20-21, there were 50 people arrested. It is not known how many of those arrested fit the definition of the conduct described under s. 800.06, F.S. It is possible that this conduct might currently fall under simple battery, a high volume misdemeanor offense that elevates to a Level 1, 3rd degree felony if a second or subsequent violation occurs (168,345 arrests over the last three fiscal years). However, it cannot be determined where these offenses are currently captured, nor how many arrests occur for these acts in a given year.²¹

In FY 2018-19, the incarceration rate for a Level 1, 3rd degree felony was 9.5 percent, and in FY 2019-20 the incarceration rate was 8.2 percent. In FY 2020-21, the incarceration rate for a Level 1, 3rd degree felony was 8.1 percent.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 800.06 of the Florida Statutes.

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 Children, Families, and Elder Affairs on January 11, 2022:

The committee substitute provides that the provision reclassifying the criminal offense from a first degree misdemeanor to a third degree felony is applicable if a person has one prior conviction for lewd or lascivious molestation and such person commits a second or subsequent violation.

- B. **Amendments:**

None.

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

²¹ *Id.*

²² *Id.*