

STORAGE NAME: h0023s1a.flc

DATE: January 15, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: CS/HB 23

RELATING TO: Children's Protection Act of 1999

SPONSOR(S): Committee on Crime and Punishment and Representative Ball

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (2) FAMILY LAW AND CHILDREN
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill creates the "**Children's Protection Act of 1999**" and, generally, **increases the penalty for crimes committed upon children**, as follows:

Lewd, lascivious, or indecent assault is redefined into four new categories proscribing four types of lewd acts committed against children, by degree of severity.

The bill increases the penalty for certain Lewd & Lascivious offenses when the defendant is over 18, but reduces the penalty in certain cases, when both parties are minors.

Incest is modified to include any "sexual activity", not just sexual intercourse, and increases the penalty to a **2nd-degree felony** if the victim is under 18.

This act is scheduled to take effect on October 1, 1999.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Sexual Battery

Section **794.011**, Florida Statutes, defines sexual battery as “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;”

Consent: A conviction for sexual battery requires proof of non-consent by the victim if he or she is over 12 years of age.

The punishment for sexual battery ranges from a capital felony (child under 12) to a second-degree felony (person over 12, not involving serious physical force).

SEXUAL BATTERY				
Defining Conduct	Age of Victim	Age of Defendant	Felony Penalty	Proof of Non-consent?
Sexual battery or attempt with injury (794.011(2)(a), F.S.)	less than 12	over 18	Capital	No
Sexual battery or attempt with injury (794.011(2)(b), F.S.)	less than 12	less than 18	Life	No
Sexual battery; use or threat of deadly weapon or actual physical force (794.011(3), F.S.)	12 or older		Life	Yes
Sexual battery and victim is physically helpless to resist (794.011(4)(a), F.S.)	12 or older		1st degree	Yes
Sexual battery and coercion by force or threat of force (794.011(4)(b), F.S.)	12 or older		1st degree	Yes
Sexual battery and coercion by threat of retaliation (794.011(4)(c), F.S.)	12 or older		1st degree	Yes
Sexual battery and administration of drug to incapacitate victim(794.011(4)(d), F.S.)	12 or older		1st degree	Yes

SEXUAL BATTERY				
Defining Conduct	Age of Victim	Age of Defendant	Felony Penalty	Proof of Non-consent?
Sexual battery and victim is mentally defective (794.011(4)(e), F.S.)	12 or older		1st degree	Yes
Sexual battery and victim is incapacitated (794.011(4)(f), F.S.)	12 or older		1st degree	Yes
Sexual battery and defendant is a law enforcement officer or elected official (794.011(4)(g), F.S.)	12 or older		1st degree	Yes
Sexual battery without use of force (794.011(5), F.S.)	12 or older		2nd degree	Yes
Person who is in position of familial or custodial authority and who solicits person to engage in sexual battery (794.011(8)(a), F.S.)	less than 18		3rd degree	No
Person who is in position of familial or custodial authority and who commits sexual battery (794.011(8)(b), F.S.)	Between 12 and 18		1st degree	No

Lewd, Lascivious, or Indecent Assault

Prosecutions for exploitative sexual contact with a child **under 16** years of age are prosecuted under the Lewd & Lascivious Assault statute (**800.04**). The statute proscribes four types of conduct, as follows:

- 1) handling, fondling or assaulting any child under the age of 16 years in a lewd, lascivious, or indecent manner;
- 2) committing **actual** or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, actual lewd exhibition of the genitals, or any act or conduct which simulates that sexual battery is being or will be committed upon any child under the age of 16 years or forces or entices the child to commit any such act;
- 3) committing an act defined as sexual battery under s. 794.011(1)(h) upon any child under the age of 16 years; or

- 4) knowingly committing any lewd or lascivious act in the presence of any child under the age of 16 years.

Consent is never a defense, and the offense is punishable as a 2nd-degree felony, regardless of the age of the defendant. This statute is Florida's method of penalizing statutory rape as well. Anyone who has sexual intercourse with a child under the age of 16 may be charged with a violation of 800.04 regardless of the age of the offender.

Unlawful Sexual Activity with Certain Minors

Section **794.05**, Florida Statutes, criminalizes sexual activity between a person over 24 years of age and a child 16 or 17 years of age.

The offense is punishable as a 2nd-degree felony.

Incest

Section **826.04**, Florida Statutes, provides that it is unlawful to knowingly marry or have sexual intercourse with a person related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece.

"Sexual Intercourse" is defined as the penetration of the female sex organ by the male sex organ, however slight; emission of semen is not required.

The offense is punishable as a 3rd-degree felony.

B. EFFECT OF PROPOSED CHANGES:

Lewd or Lascivious (L&L): Battery, Molestation, Conduct or Exhibition

Consent is not currently a defense to this crime; pursuant to CS/HB 23, consent of a victim under the age of 16 cannot be raised as a defense to a prosecution for any offense under s. 800.04, F.S.

The bill redefines the proscribed conduct into four new categories, as follows:

- a. **L&L Battery** -- proscribes "sexual activity" which is defined the same as sexual battery (the 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). Also proscribes encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, or prostitution.
- b. **L&L Molestation** -- proscribes intentional lewd touches to the breasts, genitals, genital area, or buttocks, or the clothing covering them. It, also, includes situations where the defendant "forces or entices" the victim to touch the defendant in a lewd manner.
- c. **L&L Conduct** -- proscribes intentional lewd touches to any part of the body.

- d. **L&L Exhibition** -- proscribes intentional lewd exposure of the genitals, or intentional masturbation. Does not require any physical contact with the victim.

Lewd or Lascivious (L&L): Battery, Molestation, Conduct & Exhibition

OFFENSE	Defining Conduct	Age of Victim	Age of Defendant	Felony Penalty
L&L Battery	Sexual Activity (Sexual Battery)	12-16	any age	2nd Degree
L&L Molestation	touching genital area, breasts or buttocks	0-12	18 & over	1st Degree
		0-12	under 18	2nd Degree
		12-16	18 & over	2nd Degree
		12-16	under 18	3rd Degree
L&L Conduct	lewd touching (anywhere) or solicitation	0-16	18 & over	2nd Degree
		0-16	under 18	3rd Degree
L&L Exhibition	exposure of genitals (no contact)	0-16	18 & over	2nd Degree
		0-16	under 18	3rd Degree

Incest -- Victim Under 18

The bill amends Section **826.04**, Florida Statutes, (Incest) by:

- a. **expanding proscribed conduct** (formerly limited to sexual intercourse) to include any **“sexual activity”** which includes any oral, anal, or vaginal penetration by, or union with, the sexual organ of another.
- b. **increasing the penalty** from a 3rd to a 2nd-degree felony if the victim is under 18.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 775.084, 775.15, 787.01, 787.02, 787.025, 800.04; 826.04, 914.16, 921.0022, 944.606, and 948.03, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: "This act shall be known and may be cited as the 'Children's Protection Act of 1999'."

Section 2: Incorporates the bill by reference.

Sections 3 & 4: Incorporates the bill by reference.

Section 5: Amends Section 800.04 by redefining offense of Lewd & Lascivious Conduct.

Section 6: Amends Section 826.04 to increase penalty for incest, under specified circumstances.

Section 7: Incorporates the bill by reference.

Section 8: Incorporates the bill by reference.

Section 9: Incorporates the bill by reference.

Section 10: Provides an effective date of October 1, 1999.

III. **FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. **Non-recurring Effects:**

See, Fiscal Comments.

2. **Recurring Effects:**

See, Fiscal Comments.

3. **Long Run Effects Other Than Normal Growth:**

See, Fiscal Comments.

4. **Total Revenues and Expenditures:**

See, Fiscal Comments.

B. **FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. **Non-recurring Effects:**

See, Fiscal Comments.

2. **Recurring Effects:**

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

Section 921.0012(9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine its impact on the state prison system. The CJEC has determined that CS/HB 23 has an insignificant fiscal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise the revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Committee on Crime and Punishment:

The purpose of the bill appears to modify the penalties for lewd and lascivious behavior so that the ages of the defendant and the victim are taken into account. The bill also more clearly prohibits lewd conduct than current law.

The Committee on Family Law and Children:

The definition of "sexual activity" for the purposes of s.800.04, F.S. (lewd and lascivious offenses committed upon or in the presence of persons less than 16 years of age), includes penetration by an object. The definition of "sexual activity" for the purposes of s. 826.04, F.S. (incest), does not include penetration with an object. It would appear that penetration with an object creates the same harm to a child victim, regardless of whether the offender is a stranger or a relative, and thus penetration by an object should be treated similarly in both situations of lewd and lascivious activity and in incest.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime and Punishment adopted an amendment which changed the age for which consent is not a defense from victims under 12 years of age to victims under 16 years of age. This change made the committee substitute consistent with current law in this regard and corrected an inadvertent error.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

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AS REVISED BY THE COMMITTEE ON Family Law and Children:

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