



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

Section 796.07(2), F.S., provides that it is unlawful:

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.
- To offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.
- To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.
- To aid, abet, or participate in any of the acts or things enumerated in this subsection.
- To purchase the services of any person engaged in prostitution.

Section 796.07(4), F.S., provides that a first offense under s. 796.07, F.S., is a 2nd degree misdemeanor, a second offense is a 1st degree misdemeanor, and a third or subsequent offense is a third degree felony. This felony offense is not classified in the offense severity ranking chart, and is thus is a Level 1 offense. See ss. 921.0022 and 921.0023(1), F.S.

Section 796.07(1)(b), F.S., defines "lewdness" as "any indecent or obscene act." At least eight other statutes prohibit lewdness, none of those statutes define the term. The courts have further defined lewdness, as applied to all of the statutory prohibitions on lewdness, in more specific terms. The latest Florida Supreme Court case discusses lewdness as follows:

Under Florida criminal law the terms "lewd" and "lascivious" are synonymous: Both require an intentional act of sexual indulgence or public indecency, when such act causes offense to one or more persons viewing it or otherwise intrudes upon the rights of others. The terms "lewd" and "lascivious" thus mean something more than a negligent disregard of accepted standards of decency, or even an intentional but harmlessly

discreet unorthodoxy. Acts are neither "lewd" nor "lascivious" unless they substantially intrude upon the rights of others.

*Schmitt v. State*, 590 So.2d 404, 410 (Fla. 1991) (internal citations and footnotes omitted), *cert. denied*, 503 U.S. 964 (1992).

As to the requirement that the lewd act substantially intrude upon the rights of others, a person must witness the act and be offended thereby. One circuit court has specifically held that a law enforcement officer may be a person offended by a lewd act<sup>1</sup>, but courts in a neighboring county have ruled otherwise.<sup>2</sup> Later court opinions have recognized that there is no clear consensus.<sup>3</sup>

In a somewhat similar vein, the crime of disorderly conduct may also have a requirement that someone other than a law enforcement officer be offended by the conduct.<sup>4</sup>

### **Effect of Bill**

This bill amends the term "lewdness" as it applies to s. 796.07, F.S., to add that the indecent or obscene act must be done in the presence of any person, including a law enforcement officer.

#### **C. SECTION DIRECTORY:**

Section 1 amends s. 796.07, F.S., to amend the definition of lewdness.

Section 2 provides an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>1</sup> *State v. Katherine Willits*, 4 Fla.L.Weekly Supp. 586 (Fla. 15th Circuit, January 17, 1997) (Palm Beach County).

<sup>2</sup> *State v. Altice*, 7 Fla.L.Weekly Supp. 222 (Fla. 17th Circuit, November 1999); *State v. Silvers*, 7 Fla.L.Weekly Supp. 592 (Fla. 1th Circuit June 15, 2000) (Broward County).

<sup>3</sup> Two courts have indicated that both positions are arguable. *Maily v. Jenne*, 867 So.2d 1250 (Fla. 4th DCA 2004); and *Hall v. Stewart*, 297 F.Supp.2d 1328 (S.D. Fla. 2004). Both arise out of dismissal of civil suits filed against the Broward County Sheriff after the Circuit Courts dismissed criminal lewdness charges.

<sup>4</sup> *Harbin v. State*, 358 So.2d 856 (Fla. 1st DCA 1978).

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The amended definition of lewdness does not include the requirement that the act be offensive to another person, and thus may impliedly repeal the requirement. However, "[i]t is well settled in Florida that the courts will disfavor construing a statute as repealed by implication unless that is the only reasonable construction."<sup>5</sup>

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

n/a

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<sup>5</sup> *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So.2d 249, 250 (Fla.1987).