

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 85 Lewd or Lascivious Molestation

SPONSOR(S): Kravitz and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 496

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|------------------|----------------|-----------------|
| 1) <u>Safety & Security Council</u> | <u>15 Y, 0 N</u> | <u>Kramer</u> | <u>Havlicak</u> |
| 2) <u>Policy & Budget Council</u> | <u>31 Y, 0 N</u> | <u>Leznoff</u> | <u>Hansen</u> |
| 3) _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

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 the offense of lewd or lascivious molestation. If an offender is 18 years of age or older and the victim is under the age of 12, the offense of lewd or lascivious molestation is a life felony. As a result of the Jessica Lunsford Act, this offense is punishable by a term of imprisonment for life or by a sentence of not less than 25 years' imprisonment followed by probation or community control for the remainder of the offender's natural life. The offender must be electronically monitored during this term of probation or community control.

HB 85 would require the imposition of a life sentence for a second or subsequent violation for the offense of lewd or lascivious molestation where the victim is under the age of 12 and the offender is 18 or older for such crimes committed on or after July 1, 2008. The punishment for a first conviction would remain the same as provided in current law – a minimum sentence of 25 years' imprisonment followed by lifetime supervision with electronic monitoring and a maximum sentence of life in prison.

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill on the Department of Corrections. During the 2007 session, the conference determined that the original version of HB 41, which was identical to this bill, would have an insignificant prison bed impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility/provide limited government: The bill increases the sanction for a criminal offense.

B. EFFECT OF PROPOSED CHANGES:

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. If an offender is 18 years of age or older and the victim is under the age of 12, the offense of lewd or lascivious molestation is a life felony.¹ Section 775.082, F.S. provides that the life felony is punishable by a term of imprisonment for life or by a sentence of not less than 25 years' imprisonment and not exceeding life imprisonment followed by probation or community control for the remainder of the person's natural life. The offender must be electronically monitored during this term of probation or community control.²

HB 85 would require the imposition of a life sentence for a second or subsequent violation for the offense of lewd or lascivious molestation where the victim is under the age of 12 and the offender is 18 or older for crimes committed on or after July 1, 2008. The punishment for a first conviction for this offense would remain the same as provided in current law – a minimum sentence of 25 years' imprisonment followed by lifetime supervision with electronic monitoring and a maximum sentence of life in prison.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.082(3), F.S. relating to sentence for offense of lewd or lascivious molestation.

Section 2. Amends s. 948.012, F.S. to correct cross-references.

Section 3. Reenacts s. 800.04(5), F.S. for the purpose of incorporating the amendment made by the act to section 775.082, F.S. by reference.

Section 4. Provides effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹ The Jessica Lunsford Act increased the severity of this offense from a first degree felony to a life felony. See, Ch. 2005-28(5), Laws of Fla.

² S. 948.012(4), F.S. In electronically monitoring this type of offender, the Department of Corrections is required to "use a system that actively monitors and identifies the offender's location and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations". S. 948.11(6), F.S.

2. Expenditures:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill on the Department of Corrections. During the 2007 session, the conference determined that the original version of HB 41, which was identical to this bill, would have an insignificant prison bed impact. The Office of the State Courts Administrator has indicated the bill would have little impact on the trial courts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This bill provides for a minimum mandatory life sentence for persons committing lewd and lascivious molestation on a child 11 and under for a second time.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES