

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 Criminal Justice Committee

BILL: SB 496

INTRODUCER: Senator Dockery

SUBJECT: Lewd or Lascivious Molestation/Victim Under Twelve

DATE: January 9, 2008

REVISED: 01/23/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u>JA</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

I. Summary:

The bill provides that, for a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), F.S. (lewd or lascivious molestation by a person 18 years of age or older against a victim less than 12 years of age), this person shall receive a term of imprisonment for life.

This bill substantially amends sections 775.082 and 948.012, F.S., and reenacts section 800.04(5)(b), F.S.

II. Present Situation:

A person who intentionally touches in a lewd or lascivious manner¹ 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," a second degree felony.² However, if a person 18 years of age or older commits

¹ The terms "lewd" and "lascivious" are not defined in statute. The courts construe these terms according to their common and ordinary meaning. The terms have been "referred to as generally and usually involving 'an unlawful indulgence in lust, eager for sexual indulgence.'" *Burks v. State*, 766 So.2d 468, 470 (Fla. 5th DCA 200), quoting *Chesebrough v. State*, 255 So.2d 675, 678 (Fla. 1971) and *Payne v. State*, 463 S.2d 271 (Fla. 2d DCA 1984). The terms have "also been said to connote 'wicked, lustful, unchaste, licentious, or sensual design on the part of the perpetrator.' *Chesebrough*, 255 So.2d at 677, quoting from *Boles v. State*, 158 Fla. 220, 27 So.2d 293, 294 (1946); *Goodmakers v. State*, 450 So.2d 888, 891 (Fla. 2d DCA 1984)," and import "'more than a negligent disregard of the decent proprieties and consideration due to others.' *McKinley v. State*, 33 Okl. Cr. 434, 244 P. 208 (1926), cited by the Florida Supreme Court in *Chesebrough* for the foregoing general usual meaning." *Id.* "[A] determination of the precise meaning of the words 'lewd and lascivious' in particular contexts must be developed on a case by case basis." *Id.*

² Section 800.04(5)(a), F.S.

lewd molestation against a victim less than 12 years of age, the offense is a life felony.³ Section 775.082(3)(a)4., F.S., provides that the life felony is punishable by a term of imprisonment for life *or* 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.⁴ The offender must be electronically monitored during this term of probation or community control.⁵

III. Effect of Proposed Changes:

The bill amends s. 775.082, F.S., Florida's general penalties section, to require the imposition of a life sentence for a second or subsequent conviction for the offense of lewd or lascivious molestation under s. 800.04(5)(b), F.S., committed on or after July 1, 2008. This offense is a life felony and involves lewd molestation by a person 18 years of age or older against a victim less than 12 years of age. The punishment for a first conviction for this offense would remain the same as provided in current law – life imprisonment *or* a minimum sentence of 25 years imprisonment and not exceeding life imprisonment followed by lifetime supervision with electronic monitoring.⁶

The bill also amends s. 948.012(4), F.S., which pertains to split sentences, to correct a current cross reference to s. 775.082(3)(a)4., F.S., to conform to referencing number changes resulting from the amendment of this provision by the bill.

The bill also reenacts s. 800.04(5)(b), F.S. (the lewd molestation offense relevant to the bill), for the purpose of incorporating the amendment made by the bill to s. 775.082, F.S., in a reference to that section.

The bill takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ Section 800.04(5)(b), F.S. The Jessica Lunsford Act (ch. 2005-28(5), L.O.F.) increased the severity of this offense from a first degree felony to a life felony.

⁴ Section 775.082(3)(a)4.a. and b., F.S.

⁵ Section 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." Section 948.11(6), F.S.

⁶ Section 775.082(3)(a)4.a. and b., F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) estimates that HB 85, which is identical to SB 496, will have an insignificant prison bed impact. The Florida Department of Corrections states that there have been 113 offenders admitted to the department for a violation of s. 800.04(5)(b), F.S., based on sentence structure data entered through October 3, 2007, and an offense date on or after September 1, 2005. Thirty of those offenders received community supervision sanctions, and the remainder received a prison sentence.

Staff notes that CJIC estimates are based on a five-year projection, and therefore, it is unknown what the prison bed impact, if any, of the bill might be beyond the five-year projected period. As data becomes available regarding sentencing of this new offense, CJIC will be able to utilize this data in future projections of prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.