

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 801 Unnatural and lascivious acts
SPONSOR(S): Safety & Security Council; Snyder
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>11 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Kramer/Davis</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Section 800.02, F.S. provides that a person who commits any unnatural and lascivious act with another person commits a second degree misdemeanor, punishable by up to sixty days in county jail and a fine of up to \$500. The bill amends this section to increase the severity of the offense from a second degree misdemeanor to a third degree felony if the person has twice previously been convicted of the offense.

The offense will also be a third degree felony if it is committed on or within 1,000 feet of the real property comprising:

1. A child care facility;
2. A public or private elementary, middle or secondary school between the hours of 6 a.m. and 12 midnight; or
3. A state, county or municipal park, a public beach, a community center, or a publicly owned recreational facility at any time.

A third degree felony is punishable by up to five years in prison and a fine of \$5,000.

On February 26, 2008, the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility/Provide limited government: This bill will have the effect of increasing the maximum sentence which may be imposed for certain offenses committed on or within 1,000 feet of certain locations.

B. EFFECT OF PROPOSED CHANGES:

Current law:

Section 800.02, F.S. provides that a person who commits any unnatural and lascivious act with another person commits a second degree misdemeanor, punishable by up to sixty days in county jail and a fine of up to \$500. The jury instruction defines the term "unnatural" as meaning "not in accordance with nature or with normal feelings or behavior." The term "lascivious" means "lustful, normally tending to excite a desire for sexual satisfaction".

In *Conforti v. State*,¹ the defendant was charged with a violation of this section after he masturbated while sitting in his car with an undercover law enforcement officer outside watching. The court reversed the conviction, stating that the plain wording of the statute requires that the lewd or lascivious act be committed "with another person". According to the court:

It cannot be said that appellant's masturbation was committed by a person with 'another person'. The legislature seems to have implicitly recognized that section 800.02 would not be applicable to behavior such as this by designing other statutory provisions within chapter 800 to cover it.

Changes made to section 800.02 by CS/HB 801:

The bill amends section 800.02 to provide that the offense is a third degree felony if it is committed on or within 1,000 feet² of the real property comprising:

1. A child care facility;³
2. A public or private elementary, middle or secondary school between the hours of 6 a.m. and 12 midnight; or
3. A state, county or municipal park, a public beach, a community center,⁴ or a publicly owned recreational facility at any time.

A third degree felony is punishable by up to five years in prison and a fine of \$5,000.

¹ *Conforti v. State*, 800 So.2d 350 (Fla. 4th DCA 2001).

² Section 893.13, F.S. increases the severity of drug offenses committed in or within 1,000 feet of the real property comprising a child care facility or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility.

³ The bill refers to the definition of child care facility contained in section 402.302, F.S. Further, this will only apply to child care facilities that are in compliance with the signage requirements of s. 893.13(1)(c), F.S. This section refers to the posting of "a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public."

⁴ The bill refers to the definition of the term "community center" contained in section 893.13. This section defines the term to mean a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public.

The bill also increases the severity of the offense from a second degree misdemeanor to a third degree felony if the person has twice previously been convicted of violating this section or section 800.03.

Section 800.03, F.S. makes it a first degree misdemeanor, punishable by up to one year in county jail and a fine of up to \$1,000 for a person to “expose or exhibit one’s sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.”

C. SECTION DIRECTORY:

Section 1. Amends s. 800.02, F.S. relating to unnatural and lascivious act.

Section 2. Provides effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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:

On February 26, 2008, the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections.

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, if enacted, will continue this Legislature's direction of providing enhanced safety for our more vulnerable citizens.

It will help protect children by providing enhanced penalties for those individuals who perform lewd or indecent acts at or near places where children are known to assemble.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Committee on Homeland Security & Public Safety adopted an amendment which is traveling with the bill. The amendment removed the provisions from the bill relating to section 800.03, F.S. The Safety & Security Council made the bill a council substitute.