

CS/HB 379 – Indecent, Lewd, or Lascivious Touching

This bill creates s. 784.0355, F.S., adding a **1st degree misdemeanor** for “indecent battery,” which occurs when “a person...actually and intentionally touches a person 16 years of age or older...against his or her will...and...on the breasts, genitals, genital area, or buttocks, or on the clothing covering them...or...forces a person 16 years or age or older to touch the perpetrator on the breasts, genitals, genital area, or buttocks, or on the clothing covering them.” Furthermore, “a person who has any prior conviction for indecent battery and who commits a second or subsequent violation” would commit a **Level 3, 3rd degree felony**. Additionally, this bill creates s. 784.036, F.S., which states that “notwithstanding any other provision of law, a single indictment or information may, under proper circumstances, charge battery and indecent battery in connection with one course of conduct in separate counts that may be consolidated for trial, but the trier of fact may return a guilty verdict on one or the other, but not both, of the counts.”

Finally, this bill amends s. 794.05, F.S., adding a **Level 4, 3rd degree felony** for “a person 24 years of age or older who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person 16 or 17 years of age, or forces or entices a person 16 or 17 years of age to so touch the perpetrator.”

Per FDLE, in FY 18-19, there were 125 people arrested for the second degree misdemeanors of lewd and lascivious behavior (s. 798.02, F.S.) and unnatural and lascivious act (s. 800.02, F.S.). In FY 19-20, there were 63 people arrested, and in FY 20-21, there were 50 people arrested. It is not known how many of those arrested fit the definition of the conduct described under s. 784.0355, F.S. or the new language under s. 794.05, F.S. It is possible that this conduct might currently fall under simple battery, a high volume misdemeanor offense that elevates to a Level 1, 3rd degree felony if a second or subsequent battery occurs after a prior conviction (168,345 arrests over the last three fiscal years). However, it cannot be determined where these offenses are currently captured, nor how many arrests occur for these acts in a given year.

Per DOC, in FY 18-19, there were 58 new commitments for “a person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age” under s. 794.05, F.S. In FY 19-20, there were 61 new commitments, and in FY 20-21, there were 43 new commitments. However, this offense is a Level 6, 2nd degree felony.

In FY 18-19, the incarceration rate for a Level 3, 3rd degree felony was 9.7%, and in FY 19-20 the incarceration rate was 8.9%. In FY 20-21, the incarceration rate for a Level 3, 3rd degree felony was 8.6%. In FY 18-19, the incarceration rate for a Level 4, 3rd degree

felony was 22.3%, and in FY 19-20 the incarceration rate was 19.3%. In FY 20-21, the incarceration rate for a Level 4, 3rd degree felony was 19.1%.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

Requested by: House