

By Representative Futch

1 A bill to be entitled
2 An act relating to mandatory sentences for
3 sexual felony offenses; creating s. 794.0116,
4 F.S.; defining "repeat sexual felony offender";
5 providing within the definition a category of
6 enumerated felony offenses in violation of s.
7 794.011, F.S., relating to sexual battery;
8 requiring the court to sentence a defendant as
9 a repeat sexual felony offender and impose a
10 10-year mandatory minimum term of imprisonment
11 under specified circumstances when the
12 defendant is to be sentenced for committing or
13 attempting to commit any of the enumerated
14 felony violations of s. 794.011, F.S., and the
15 defendant has previously been convicted of
16 committing or attempting to commit any one of
17 certain enumerated felony offenses involving
18 sexual battery; providing penalties; providing
19 procedures and criteria for court determination
20 if the defendant is a repeat sexual felony
21 offender; providing for sentencing as a repeat
22 sexual felony offender; providing for
23 construction; amending s. 800.04, F.S.;
24 specifying sexual activity by certain persons
25 with certain younger persons as sexual battery;
26 providing penalties; providing a mandatory
27 minimum sentencing period; providing an
28 effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 794.0116, Florida Statutes, is
2 created to read:

3 794.0116 Repeat sexual felony offenders; definition;
4 procedure; enhanced penalties.--

5 (1) As used in this act, "repeat sexual felony
6 offender" means a defendant for whom the court must impose a
7 mandatory minimum term of imprisonment, as provided in
8 subsection (3), if it finds that:

9 (a) The defendant has previously been convicted of a
10 felony or an attempt or conspiracy to commit a felony and one
11 or more of such convictions was for:

12 1. Any felony offense in violation of s.
13 794.011(2)(b), (3), (4), or (5) or s. 800.04, or an attempt or
14 conspiracy to commit such felony offense.

15 2. A qualified offense as defined in s. 775.084(1)(e),
16 if the elements of the qualified offense are substantially
17 similar to the elements of a felony offense in violation of s.
18 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
19 to commit the felony offense.

20 (b) The felony for which the defendant is to be
21 sentenced is one of the felonies enumerated in subparagraph
22 (a)1. or subparagraph (a)2. and was committed:

23 1. While the defendant was serving a prison sentence
24 or other sentence imposed as a result of a prior conviction
25 for any offense enumerated in subparagraph (a)1. or
26 subparagraph (a)2.; or

27 2. Within 20 years after the date of the conviction of
28 the last prior offense enumerated in subparagraph (a)1. or
29 subparagraph (a)2., or within 20 years after the defendant's
30 release from a prison sentence, probation, community control,
31 or other sentence imposed as a result of a prior conviction

1 for any offense enumerated in subparagraph (a)1. or
2 subparagraph (a)2., whichever is later.

3 (c) The defendant has not received a pardon on the
4 ground of innocence for any crime that is necessary for the
5 operation of this subsection.

6 (d) A conviction of a crime necessary to the operation
7 of this subsection has not been set aside in any
8 postconviction proceeding.

9 (2) In a separate proceeding, the court shall
10 determine if the defendant is a repeat sexual felony offender.
11 The procedure shall be as follows:

12 (a) The court shall obtain and consider a presentence
13 investigation prior to the imposition of a sentence as a
14 repeat sexual felony offender.

15 (b) Written notice shall be served on the defendant
16 and the defendant's attorney a sufficient time prior to the
17 entry of a plea or prior to the imposition of sentence in
18 order to allow the preparation of a submission on behalf of
19 the defendant.

20 (c) Except as provided in paragraph (a), all evidence
21 presented shall be presented in open court with full rights of
22 confrontation, cross-examination, and representation by
23 counsel.

24 (d) Each of the findings required as the basis for
25 such sentence shall be found to exist by a preponderance of
26 the evidence and shall be appealable to the extent normally
27 applicable to similar findings.

28 (e) For the purpose of identification of a repeat
29 sexual felony offender, the court shall fingerprint the
30 defendant pursuant to s. 921.241.

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1 (f) For an offense committed on or after the effective
2 date of this act, if the court, in a separate proceeding
3 pursuant to this subsection, determines that the defendant
4 meets the criteria under subsection (1) for imposing such
5 sanction, the court must sentence the defendant as a repeat
6 sexual felony offender, subject to imprisonment pursuant to
7 this section as provided in subsection (3).

8 (3)(a) The court, in conformity with the procedure
9 established in subsection (2), must sentence the repeat sexual
10 felony offender to a mandatory minimum term of 10 years'
11 imprisonment.

12 (b) Nothing in this subsection shall prevent a court
13 from imposing a greater sentence of incarceration as
14 authorized by law.

15 Section 2. Subsection (4) of section 800.04, Florida
16 Statutes, is amended to read:

17 800.04 Lewd or lascivious offenses committed upon or
18 in the presence of persons less than 16 years of age.--

19 (4)(a) LEWD OR LASCIVIOUS BATTERY.--A person who:

20 1.(a) Engages in sexual activity with a person 12
21 years of age or older but less than 16 years of age; or

22 2.(b) Encourages, forces, or entices any person less
23 than 16 years of age to engage in sadomasochistic abuse,
24 sexual bestiality, prostitution, or any other act involving
25 sexual activity

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27 commits lewd or lascivious battery, a felony of the second
28 degree, punishable as provided in s. 775.082, s. 775.083, or
29 s. 775.084.

30 (b) A person who is over 24 years of age and who
31 engages in sexual activity with a person 12 or 13 years of age

1 commits sexual battery, a felony of the second degree,
2 punishable as provided in s. 775.082, s. 775.083, s. 775.084,
3 or s. 794.0115 and, upon conviction, the court shall sentence
4 such person to a minimum mandatory term of 10 years'
5 imprisonment.

6 Section 3. This act shall take effect October 1, 2000.

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9 HOUSE SUMMARY

10 Defines "repeat sexual felony offender" and provides
11 within the definition a category of enumerated felony
12 offenses relating to sexual battery. Requires a court to
13 sentence a defendant as a repeat sexual felony offender
14 and impose a 10-year mandatory minimum term of
15 imprisonment when the defendant is to be sentenced for
16 committing or attempting to commit any of the enumerated
17 felonies and the defendant has previously been convicted
18 of committing or attempting to commit any one of
19 enumerated felony offenses involving sexual battery.
20 Provides procedures and criteria for court determination
21 of the defendant as a repeat sexual felony offender and
22 provides for sentencing as a repeat sexual felony
23 offender. Specifies sexual activity by a person 24 years
24 of age or older with persons 12 or 13 years of age as
25 second degree felony sexual battery and provides a
26 10-year mandatory minimum sentencing period.
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