

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2406

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Mandatory Sentences/Sexual Offenses

DATE: April 18, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2406 amends s. 794.0115, F.S., relating to the category of repeat offender described as the “repeat sexual batterer” to rename this category as the “repeat sexual felony offender” and provides under specified circumstances, that a person who has previously been convicted of one or more enumerated sexual battery offenses under s. 794.011, F.S., or any lewd or lascivious offense under s. 800.04, F.S., and who commits one or more of such offenses, is subject to a 20-year mandatory minimum term of imprisonment.

The CS also amends s. 800.04, F.S., to provide that a person who is over 24 years of age and who engages in sexual activity with a person 12 or 13 years of age commits lewd or lascivious battery, a second degree felony, and is subject to a 10-year mandatory minimum term of imprisonment.

This CS amends sections 794.0115 and 800.04 of the Florida Statutes.

II. Present Situation:

I. Repeat Sexual Batterer

Section 794.0115, F.S., creates a category of repeat offender described as a “repeat sexual batterer.” A defendant is subject to a 10-year mandatory minimum term of imprisonment if he or she has:

- Previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:
 - Sexual battery by a defendant less than 18 years of age upon, or in an attempt to commit sexual battery the defendant injures the sexual organs of, a person less than 12 years of age (s. 794.011(2)(b), F.S.).

- Sexual battery by a defendant of any age upon a person 12 years of age or older, without that person's consent, and in the process thereof the defendant uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury (s. 794.011(3), F.S.).
- Sexual battery by a defendant of any age upon a person 12 years of age or older without that person's consent and where that person is physically helpless to resist or where other prescribed circumstances are present (s. 794.011(4), F.S.).
- Sexual battery by a defendant of any age upon a person 12 years of age or older, without that person's consent, and in the process thereof the defendant does not use physical force and violence likely to cause serious personal injury (s. 794.011(5), F.S.).
- An offense in this or another jurisdiction the elements of which are substantially similar to the elements of any of the enumerated offenses.
- The felony offense for which the defendant is to be sentenced is one of the enumerated felonies and was committed:
 - while the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for a qualifying offense; or
 - within 10 years after the date of the conviction of the last prior qualifying offense, or within 10 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior qualifying offense.
- The defendant has not received a pardon "on the ground of innocence" for any crime that is necessary for the operation of this section, or such crime has not been set aside.

A determination that a person is a repeat sexual batterer is made in a separate proceeding. This proceeding and the procedures prescribed are identical to those found in the violent habitual felony offender provisions of s. 775.084, F.S.

II. Lewd or Lascivious Battery

Section 800.04, F.S., punishes certain lewd or lascivious acts. At subsection (4), a defendant commits lewd or lascivious battery, a second degree felony, if he or she:

- Engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or
- Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

The definition of “sexual activity” in s. 800.04, F.S., is identical to the definition of “sexual battery” in s. 794.011, F.S.

Consent of the victim does not appear to be relevant to this battery offense.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 2406 amends s. 794.0115, F.S., relating to the category of repeat offender described as the “repeat sexual batterer” to rename this category as the “repeat sexual felony offender” to make three changes to this section:

- Adds lewd or lascivious offenses under s. 800.04, F.S., to the list of enumerated, qualifying offenses. Currently, this section is not listed in s. 794.0115, F.S.
- Provides for a mandatory minimum term of imprisonment if the defendant’s offense before the court for sentencing is one of the enumerated offenses, was committed within 20 years after the date of the conviction of the last prior qualifying offense, or within 20 years after the defendant’s release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior qualifying offense, and the defendant meets other criteria. Section 794.0115, F.S., currently provides for a 10-year window.
- Provides for a 20-year mandatory minimum term of imprisonment. Currently, s. 794.0115, F.S., provides for a 10-year mandatory minimum term.

The CS also amends s. 800.04(4), F.S., which provides for the offense of lewd or lascivious battery, to provide that a person who is over 24 years of age and who engages in sexual activity with a person 12 or 13 years of age commits lewd or lascivious battery, a second degree felony, and is subject to a 10-year mandatory minimum term of imprisonment.

The Legislature’s creation of the lewd or lascivious battery may have had a negative effect on prosecution under s. 794.001(5), F.S., second degree felony sexual battery. Under this section, the state has to prove the sexual act is nonconsensual; this is not a requirement for lewd or lascivious battery. The creation of the 10-year mandatory minimum term by the CS likely will further prosecution of lewd or lascivious battery rather than prosecution of second degree felony sexual battery.

The effective date of the CS is October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference conferees are currently reviewing CS/SB 2406. An estimate of the fiscal impact of this CS was not available when this analysis was completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.