

By the Committee on Criminal Justice and Senator Campbell

307-2111A-00

1 A bill to be entitled
2 An act relating to mandatory sentences for
3 sexual felony offenses; amending s. 794.0115,
4 F.S.; redesignating a repeat sexual batterer as
5 a "repeat sexual felony offender"; defining the
6 term "repeat sexual felony offender"; providing
7 within the definition a category of enumerated
8 felony offenses; requiring the court to
9 sentence a defendant as a repeat sexual felony
10 offender and impose a 20-year mandatory minimum
11 term of imprisonment under specified
12 circumstances when the defendant is to be
13 sentenced for committing or attempting to
14 commit any of the enumerated felony offenses
15 and the defendant has previously been convicted
16 of committing or attempting to commit any one
17 of certain enumerated felony offenses;
18 providing penalties; providing procedures and
19 criteria for court determination if the
20 defendant is a repeat sexual felony offender;
21 providing for sentencing as a repeat sexual
22 felony offender; prohibiting statutory
23 gain-time and certain forms of early release
24 until the minimum sentence is served; amending
25 s. 800.04, F.S.; specifying that sexual
26 activity by certain persons with certain
27 younger persons is lewd or lascivious battery;
28 providing for a 10-year mandatory minimum term
29 of imprisonment; providing a mandatory minimum
30 sentencing period; providing an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 794.0115, Florida Statutes, is
4 amended to read:

5 794.0115 Repeat sexual felony offenders ~~batterers~~;
6 definition; procedure; enhanced penalties.--

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

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

14 1. Any felony offense in violation of s.
15 794.011(2)(b), (3), (4), or (5) or s. 800.04, or an attempt or
16 conspiracy to commit the felony offense.

17 2. A qualified offense as defined in s. 775.084(1)(e),
18 if the elements of the qualified offense are substantially
19 similar to the elements of a felony offense in violation of s.
20 794.011(2)(b), (3), (4), or (5) or s. 800.04, or an attempt or
21 conspiracy to commit the felony offense.

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

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

29 2. Within 20 ~~10~~ years after the date of the conviction
30 of the last prior offense enumerated in subparagraph (a)1. or
31 subparagraph (a)2., or within 20 ~~10~~ years after the

1 defendant's release from a prison sentence, probation,
2 community control, or other sentence imposed as a result of a
3 prior conviction for any offense enumerated in subparagraph
4 (a)1. or subparagraph (a)2., whichever is later.

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

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

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

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

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

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

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

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1 (e) For the purpose of identification of a repeat
2 sexual felony offender ~~batterer~~, the court shall fingerprint
3 the defendant pursuant to s. 921.241.

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

13 (3)(a) The court, in conformity with the procedure
14 established in subsection (2), must sentence the repeat sexual
15 felony offender ~~batterer~~ to a mandatory minimum term of 20 ~~10~~
16 years' imprisonment. Notwithstanding s. 948.01, adjudication
17 of guilt or imposition of sentence shall not be suspended,
18 deferred, or withheld, and the defendant is not eligible for
19 statutory gain-time under s. 944.275 or any form of
20 discretionary early release, other than pardon or executive
21 clemency, or conditional medical release under s. 947.149,
22 prior to serving the minimum sentence.

23 (b) Nothing in this subsection shall prevent a court
24 from imposing a greater sentence of incarceration as
25 authorized by law.

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

28 800.04 Lewd or lascivious offenses committed upon or
29 in the presence of persons less than 16 years of age.--

30 (4)(a) LEWD OR LASCIVIOUS BATTERY.--A person who:
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1 ~~1.(a)~~ Engages in sexual activity with a person 12
2 years of age or older but less than 16 years of age; or
3 2.(b) Encourages, forces, or entices any person less
4 than 16 years of age to engage in sadomasochistic abuse,
5 sexual bestiality, prostitution, or any other act involving
6 sexual activity
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8 commits lewd or lascivious battery, a felony of the second
9 degree, punishable as provided in s. 775.082, s. 775.083, or
10 s. 775.084.
11 (b) A person who is over 24 years of age and who
12 engages in sexual activity with a person 12 or 13 years of age
13 shall be sentenced by the court to a minimum mandatory
14 sentence of 10 years. Notwithstanding s. 948.01, adjudication
15 of guilt or imposition of sentence shall not be suspended,
16 deferred, or withheld, and the defendant is not eligible for
17 statutory gain-time under s. 944.275 or any form of
18 discretionary early release, other than pardon or executive
19 clemency, or conditional medical release under s. 947.149,
20 prior to serving the minimum sentence.
21 Section 3. This act shall take effect October 1, 2000.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2406

- Renames the "repeat sexual battery category" under s. 794.0115, F.S., as the "repeat sexual felony offender."
- Adds lewd or lascivious offenses under s. 800.04, F.S., to the list of enumerated qualifying offenses under s. 794.0115, F.S.
- Provides for a mandatory minimum term of imprisonment of 20 years 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.