

By the Committee on Criminal Justice and Senator Laurent

307-1788-01

1                                   A bill to be entitled  
2           An act relating to sex crimes; amending ss.  
3           794.011, 796.07, 800.04, 825.1025, 827.071,  
4           847.001, F.S., relating to sexual battery,  
5           prostitution, lewd or lascivious offenses,  
6           sexual performance by a child, and obscene  
7           literature and other material; defining the  
8           terms "vaginal" and "vagina" for purposes of  
9           laws defining certain prohibited sexual  
10          activities; creating s. 775.251, F.S.; defining  
11          the terms "dangerous sexual felony offender"  
12          and "felony sexual offense"; creating s.  
13          775.252, F.S.; requiring certain offenders  
14          convicted of specified felony sexual offenses  
15          to be sentenced as dangerous sexual felony  
16          offenders; creating s. 775.253, F.S.; requiring  
17          the court, prior to acceptance of a plea, to  
18          advise a defendant convicted of a felony sexual  
19          offense of sentencing as a dangerous sexual  
20          felony offender; creating s. 775.254, F.S.;  
21          establishing a separate proceeding for  
22          determining whether an offender is a dangerous  
23          sexual felony offender; setting forth  
24          procedures and indicating what evidence may be  
25          considered; authorizing direct appeal of  
26          sentence; identifying factors used for making a  
27          determination of whether an offender is a  
28          dangerous sexual felony offender; creating s.  
29          775.255, F.S.; providing penalties; providing  
30          that the determination that an offender is not  
31          a dangerous sexual felony offender does not

1 preclude a future determination that the  
2 offender is a sexually violent predator under  
3 ch. 394, F.S.; creating s. 775.256, F.S.;  
4 providing for release of otherwise confidential  
5 records to a state attorney or state experts  
6 for use in determining whether the offender is  
7 a dangerous sexual felony offender; providing  
8 effective dates.

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10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Present paragraphs (i) and (j) of  
13 subsection (1) of section 794.011, Florida Statutes, are  
14 redesignated as paragraphs (j) and (k), respectively, and a  
15 new paragraph (i) is added to that subsection, to read:

16 794.011 Sexual battery.--

17 (1) As used in this chapter:

18 (i) "Vaginal" or "vagina" refers to the internal or  
19 external parts of the sexual organ of a female.

20 Section 2. Paragraph (e) is added to subsection (1) of  
21 section 796.07, Florida Statutes, to read:

22 796.07 Prohibiting prostitution, etc.; evidence;  
23 penalties; definitions.--

24 (1) As used in this section:

25 (e) "Vaginal" or "vagina" refers to the internal or  
26 external parts of the sexual organ of a female.

27 Section 3. Paragraph (e) is added to subsection (1) of  
28 section 800.04, Florida Statutes, to read:

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

31 (1) DEFINITIONS.--As used in this section:

1           (e) "Vaginal" or "vagina" refers to the internal or  
2 external parts of the sexual organ of a female.

3           Section 4. Subsection (1) of section 825.1025, Florida  
4 Statutes, is amended to read:

5           825.1025 Lewd or lascivious offenses committed upon or  
6 in the presence of an elderly person or disabled adult.--

7           (1) As used in this section, the term:

8           (a) "Sexual activity" means the oral, anal, or vaginal  
9 penetration by, or union with, the sexual organ of another or  
10 the anal or vaginal penetration of another by any other  
11 object; however, sexual activity does not include an act done  
12 for a bona fide medical purpose.

13           (b) "Vaginal" or "vagina" refers to the internal or  
14 external parts of the sexual organ of a female.

15           Section 5. Paragraph (j) is added to subsection (1) of  
16 section 827.071, Florida Statutes, to read:

17           827.071 Sexual performance by a child; penalties.--

18           (1) As used in this section, the following definitions  
19 shall apply:

20           (j) "Vaginal" or "vagina" refers to the internal or  
21 external parts of the sexual organ of a female.

22           Section 6. Subsection (14) is added to section  
23 847.001, Florida Statutes, to read:

24           847.001 Definitions.--When used in this chapter:

25           (14) "Vaginal" or "vagina" refers to the internal or  
26 external parts of the sexual organ of a female.

27           Section 7. Effective upon becoming law, section  
28 775.251, Florida Statutes, is created to read:

29           775.251 Definitions.--As used in ss. 775.251-775.256,  
30 the term:

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1           (1) "Dangerous sexual felony offender" means a person  
2 who is convicted of a felony sexual offense and who has been  
3 determined by a jury or the court as being likely to commit  
4 one or more future felony sexual offenses, and based on that  
5 likelihood, would present a threat to others if released from  
6 prison within the foreseeable future.

7           (2) "Felony sexual offense" means any of the following  
8 felonies:

9           (a) Murder of a human being while engaged in sexual  
10 battery in violation of s. 782.04(1)(a)2.;

11           (b) Kidnapping of a child under the age of 13 and, in  
12 the course of that offense, committing:

13               1. Sexual battery; or

14               2. Lewd, lascivious, or indecent assault or act upon  
15 or in the presence of the child;

16           (c) False imprisonment upon a child under the age of  
17 13 and, in the course of that offense, committing:

18               1. Sexual battery; or

19               2. Lewd, lascivious, or indecent assault or act upon  
20 or in the presence of the child;

21           (d) Sexual battery in violation of s. 794.011;

22           (e) Lewd, lascivious, or indecent assault or act upon  
23 or in the presence of a child in violation of s. 800.04;

24           (f) Attempt, criminal solicitation, or conspiracy to  
25 commit any offense described in this subsection, if the  
26 attempt, criminal solicitation, or conspiracy is a felony  
27 offense; or

28           (g) A felony offense in effect at any time on or after  
29 the date this section takes effect which is comparable to any  
30 offense under paragraphs (a)-(f).

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1           Section 8. Effective upon becoming law, section  
2 775.252, Florida Statutes, is created to read:

3           775.252 Alternative sentencing.--In accordance with  
4 ss. 775.253, 775.254, and 775.255, after a person's conviction  
5 of, adjudication of guilt for, or plea of guilty or nolo  
6 contendere to a felony sexual offense, the circuit court  
7 having jurisdiction, upon motion of the state attorney or upon  
8 the court's own motion, shall, if any sentence otherwise  
9 provided by law is less than 25 years in state prison,  
10 sentence the person as a dangerous sexual felony offender.  
11 This section shall not apply in any case in which an offender  
12 must be sentenced to a mandatory term of imprisonment of 25  
13 years in state prison or longer, or in which the offender must  
14 be sentenced to death.

15           Section 9. Effective upon becoming law, section  
16 775.253, Florida Statutes, is created to read:

17           775.253 Plea requirements.--Prior to acceptance of a  
18 plea of guilty or nolo contendere to a felony sexual offense,  
19 the court shall advise the defendant that he or she may be  
20 sentenced as provided in s. 775.255.

21           Section 10. Effective upon becoming law, section  
22 775.254, Florida Statutes, is created to read:

23           775.254 Procedures, evidence, appeals of dangerous  
24 sexual felony offenders.--The procedure for determining  
25 whether a defendant is a dangerous sexual felony offender  
26 shall be as follows:

27           (1) Upon a defendant's conviction of, adjudication of  
28 guilt for, or plea of guilty or nolo contendere to a felony  
29 sexual offense, the court shall conduct a separate sentencing  
30 proceeding to determine whether the defendant is a dangerous  
31 sexual felony offender. If the court or the jury finds the

1 defendant to be a dangerous sexual felony offender, the court  
2 shall sentence the defendant to a minimum term of imprisonment  
3 of not less than 25 years and not more than a term of  
4 imprisonment for life, as authorized by s. 775.255.

5 (2) The proceeding shall be conducted by the trial  
6 judge before the trial jury as soon as practicable. If,  
7 through impossibility or inability, the trial jury is unable  
8 to reconvene for a hearing on the issue, having determined the  
9 guilt of the defendant, the trial judge may summon special  
10 jurors as provided in chapter 913 to determine the issue of  
11 the imposition of the penalty. If the jury trial has been  
12 waived, or if the defendant pleaded guilty, the determination  
13 proceeding shall be conducted before a jury impaneled for that  
14 purpose unless waived by the defendant. In the proceeding,  
15 evidence may be presented as to any matter that the court  
16 deems relevant to the nature of the crime and the character of  
17 the defendant, including previous felony sexual offenses  
18 committed by the defendant, which shall be considered by the  
19 jury or the court. Any such evidence that the court deems to  
20 have probative value may be received, regardless of its  
21 admissibility under the exclusionary rules of evidence,  
22 provided that the defendant is accorded a fair opportunity to  
23 rebut any hearsay statements. However, this subsection shall  
24 not be construed to authorize the introduction of any evidence  
25 secured in violation of the Constitution of the United States  
26 or the State Constitution. The state and the defendant or the  
27 defendant's counsel shall be permitted to present argument for  
28 or against a determination that the defendant is a dangerous  
29 sexual felony offender.

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1           (3) All evidence presented shall be presented in open  
2 court with full rights of confrontation, cross-examination,  
3 and representation by counsel.

4           (4) Each of the findings required as the basis for  
5 such sentence shall be found to exist by a preponderance of  
6 the evidence. A person sentenced as a dangerous sexual felony  
7 offender under s. 775.255 has the right of direct appeal.

8           (5) In the determination hearing, the jury or the  
9 court shall consider factors pertaining to the issue of  
10 whether the defendant is likely to commit one or more future  
11 felony sexual offenses and, based on that likelihood, would  
12 present a threat to others if released from prison within the  
13 foreseeable future.

14           (6) The jury or the court shall, at a minimum,  
15 consider the following factors, and the jury shall be  
16 instructed to consider the following factors:

17           (a) Whether before committing the felony sexual  
18 offense, the defendant was unknown to the victim.

19           (b) Whether the defendant became known to the victim  
20 for purposes of committing a felony sexual offense.

21           (c) Whether the prior record includes any convictions  
22 for any felony sexual offense.

23           (d) Whether the prior record indicates a pattern of  
24 escalating criminality.

25           (e) The length and severity of the offender's prior  
26 record.

27           (f) Whether in the defendant's prior record the  
28 defendant committed a felony sexual offense involving a victim  
29 who was previously unknown to the defendant.

30           (g) Whether in the defendant's prior record, the  
31 defendant committed a felony sexual offense in which the

1 defendant became known to the victim for purposes of  
2 committing the offense.

3 (7) Neither the state nor the defense is precluded  
4 from providing expert testimony for the jury's consideration.

5 (8) The jury, through evaluation of one or more of the  
6 factors listed in this section or in consideration of other  
7 factors presented by the state, may reach a determination that  
8 the defendant is a dangerous sexual felony offender. The jury  
9 determination that a defendant is a dangerous sexual felony  
10 offender must be unanimous.

11 Section 11. Effective upon becoming law, section  
12 775.255, Florida Statutes, is created to read:

13 775.255 Sentencing of dangerous sexual felony  
14 offenders.--

15 (1) The court shall sentence the defendant as a  
16 dangerous sexual felony offender if the jury or court  
17 determines that the defendant is likely to commit one or more  
18 future felony sexual offenses and, based on that likelihood,  
19 would present a threat to others if released in the  
20 foreseeable future. Notwithstanding the provisions of s.  
21 775.082, the dangerous sexual felony offender shall be  
22 sentenced to a minimum term of imprisonment of not less than  
23 25 years and not more than a term of life imprisonment. The  
24 court may not sentence the defendant to a term of imprisonment  
25 of less than 25 years, notwithstanding any other provision of  
26 law. The court shall not impose a sentence under this section  
27 if the defendant is convicted of a capital offense defined in  
28 chapter 921.

29 (2) If the jury or the court determines that the  
30 defendant is not a dangerous sexual felony offender, the  
31 defendant shall be sentenced as otherwise provided by law,



1 including any mandatory term of imprisonment as otherwise  
2 provided.

3 (3) A determination by the court or the jury that a  
4 person is not a dangerous sexual felony offender does not  
5 preclude a future determination that the defendant is a  
6 sexually violent predator as provided in part V of chapter  
7 394.

8 Section 12. Effective upon becoming law, section  
9 775.256, Florida Statutes, is created to read:

10 775.256 Release of records.--In order to protect the  
11 public, relevant information and records that are otherwise  
12 confidential or privileged shall be released to the state  
13 attorney or experts testifying for the state for purposes of  
14 evaluating a defendant to determine whether the defendant is a  
15 dangerous sexual felony offender. Such information does not  
16 lose its confidential status due to its release under this  
17 section.

18 Section 13. Except as otherwise expressly provided in  
19 this act, this act shall take effect July 1, 2001.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1666

- Defines "dangerous sexual felony offender" and "felony sexual offense."
- Requires certain defendants convicted of a felony sexual offense to be sentenced as dangerous sexual felony offenders, subject to a separate hearing to make that determination.
- Sets forth procedures and evidence that may be considered at this determination hearing as well as factors relevant to the determination that a defendant is a dangerous sexual felony offender.
- Provides that sentencing is subject to direct appeal.
- Provides that a dangerous sexual felony offender shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment for life.
- Provides for the release of otherwise confidential records to the state attorney and state experts to determine if a defendant is a dangerous sexual felony offender.