

By the Committee on Criminal Justice; and Senator Wasserman
Schultz

307-1946A-02

1 A bill to be entitled

2 An act relating to sexual offenses; amending s.

3 794.011, F.S.; authorizing the use of certain

4 expert witnesses when mental defect or mental

5 incapacity of the victim is at issue; amending

6 s. 825.1025, F.S.; providing for the crime of

7 lewd or lascivious offenses committed upon or

8 in the presence of an elderly person or

9 disabled person; providing penalties; amending

10 s. 921.0022, F.S., relating to the offense

11 severity ranking chart of the criminal

12 punishment code; revising punishment for lewd

13 or lascivious battery upon an elderly person or

14 disabled adult; providing an effective date.

15

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

17

18 Section 1. Subsection (11) is added to section

19 794.011, Florida Statutes, to read:

20 794.011 Sexual battery.--

21 (11) When mental defect or mental incapacity of the

22 victim is at issue, an expert witness who is licensed pursuant

23 to chapter 490, chapter 458, or chapter 459 may be utilized.

24 Section 2. Section 825.1025, Florida Statutes, is

25 amended to read:

26 825.1025 Lewd or lascivious offenses committed upon or

27 in the presence of an elderly person or disabled person

28 ~~adult~~--

29 (1) As used in this section, "sexual activity" means

30 the oral, anal, or vaginal penetration by, or union with, the

31 sexual organ of another or the anal or vaginal penetration of

1 another by any other object; however, sexual activity does not
2 include an act done for a bona fide medical purpose.

3 (2)(a) "Lewd or lascivious battery upon an elderly
4 person or disabled person ~~adult~~" occurs when a person
5 encourages, forces, or entices an elderly person or disabled
6 person ~~adult~~ to engage in sadomasochistic abuse, sexual
7 bestiality, prostitution, or any other act involving sexual
8 activity, when the person knows or reasonably should know that
9 the elderly person or disabled person ~~adult~~ either lacks the
10 capacity to consent or fails to give consent.

11 (b) A person who commits lewd or lascivious battery
12 upon an elderly person or disabled person ~~adult~~ commits a
13 felony of the second degree, punishable as provided in s.
14 775.082, s. 775.083, or s. 775.084.

15 (3)(a) "Lewd or lascivious molestation of an elderly
16 person or disabled person ~~adult~~" occurs when a person
17 intentionally touches in a lewd or lascivious manner the
18 breasts, genitals, genital area, or buttocks, or the clothing
19 covering them, of an elderly person or disabled person ~~adult~~
20 when the person knows or reasonably should know that the
21 elderly person or disabled person ~~adult~~ either lacks the
22 capacity to consent or fails to give consent.

23 (b) A person who commits lewd or lascivious
24 molestation of an elderly person or disabled person ~~adult~~
25 commits a felony of the third degree, punishable as provided
26 in s. 775.082, s. 775.083, or s. 775.084.

27 (4)(a) "Lewd or lascivious exhibition in the presence
28 of an elderly person or disabled person ~~adult~~" occurs when a
29 person, in the presence of an elderly person or disabled
30 person ~~adult~~:

- 31 1. Intentionally masturbates;

1 2. Intentionally exposes his or her genitals in a lewd
2 or lascivious manner; or

3 3. Intentionally commits any other lewd or lascivious
4 act that does not involve actual physical or sexual contact
5 with the elderly person or disabled person ~~adult~~, including
6 but not limited to, sadomasochistic abuse, sexual bestiality,
7 or the simulation of any act involving sexual activity,

8
9 when the person knows or reasonably should know that the
10 elderly person or disabled person ~~adult~~ either lacks the
11 capacity to consent or fails to give consent to having such
12 act committed in his or her presence.

13 (b) A person who commits a lewd or lascivious
14 exhibition in the presence of an elderly person or disabled
15 person ~~adult~~ commits a felony of the third degree, punishable
16 as provided in s. 775.082, s. 775.083, or s. 775.084.

17 Section 3. Paragraphs (g) and (h) of subsection (3) of
18 section 921.0022, Florida Statutes, as amended by section 2 of
19 chapter 2001-358, Laws of Florida, are amended to read:

20 921.0022 Criminal Punishment Code; offense severity
21 ranking chart.--

22 (3) OFFENSE SEVERITY RANKING CHART

23

24 Florida	Felony	
25 Statute	Degree	Description
26		
27		
28		(g) LEVEL 7
29 316.193(3)(c)2.	3rd	DUI resulting in serious bodily 30 injury.
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1	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
2			bodily injury.
3	402.319(2)	2nd	Misrepresentation and negligence
4			or intentional act resulting in
5			great bodily harm, permanent
6			disfiguration, permanent
7			disability, or death.
8	409.920(2)	3rd	Medicaid provider fraud.
9	456.065(2)	3rd	Practicing a health care
10			profession without a license.
11	456.065(2)	2nd	Practicing a health care
12			profession without a license
13			which results in serious bodily
14			injury.
15	458.327(1)	3rd	Practicing medicine without a
16			license.
17	459.013(1)	3rd	Practicing osteopathic medicine
18			without a license.
19	460.411(1)	3rd	Practicing chiropractic medicine
20			without a license.
21	461.012(1)	3rd	Practicing podiatric medicine
22			without a license.
23	462.17	3rd	Practicing naturopathy without a
24			license.
25	463.015(1)	3rd	Practicing optometry without a
26			license.
27	464.016(1)	3rd	Practicing nursing without a
28			license.
29	465.015(2)	3rd	Practicing pharmacy without a
30			license.
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1	466.026(1)	3rd	Practicing dentistry or dental
2			hygiene without a license.
3	467.201	3rd	Practicing midwifery without a
4			license.
5	468.366	3rd	Delivering respiratory care
6			services without a license.
7	483.828(1)	3rd	Practicing as clinical laboratory
8			personnel without a license.
9	483.901(9)	3rd	Practicing medical physics
10			without a license.
11	484.013(1)(c)	3rd	Preparing or dispensing optical
12			devices without a prescription.
13	484.053	3rd	Dispensing hearing aids without a
14			license.
15	494.0018(2)	1st	Conviction of any violation of
16			ss. 494.001-494.0077 in which the
17			total money and property
18			unlawfully obtained exceeded
19			\$50,000 and there were five or
20			more victims.
21	560.123(8)(b)1.	3rd	Failure to report currency or
22			payment instruments exceeding
23			\$300 but less than \$20,000 by
24			money transmitter.
25	560.125(5)(a)	3rd	Money transmitter business by
26			unauthorized person, currency or
27			payment instruments exceeding
28			\$300 but less than \$20,000.
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1	655.50(10)(b)1.	3rd	Failure to report financial
2			transactions exceeding \$300 but
3			less than \$20,000 by financial
4			institution.
5	782.051(3)	2nd	Attempted felony murder of a
6			person by a person other than the
7			perpetrator or the perpetrator of
8			an attempted felony.
9	782.07(1)	2nd	Killing of a human being by the
10			act, procurement, or culpable
11			negligence of another
12			(manslaughter).
13	782.071	2nd	Killing of human being or viable
14			fetus by the operation of a motor
15			vehicle in a reckless manner
16			(vehicular homicide).
17	782.072	2nd	Killing of a human being by the
18			operation of a vessel in a
19			reckless manner (vessel
20			homicide).
21	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
22			causing great bodily harm or
23			disfigurement.
24	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
25			weapon.
26	784.045(1)(b)	2nd	Aggravated battery; perpetrator
27			aware victim pregnant.
28	784.048(4)	3rd	Aggravated stalking; violation of
29			injunction or court order.
30	784.07(2)(d)	1st	Aggravated battery on law
31			enforcement officer.

1	784.074(1)(a)	1st	Aggravated battery on sexually
2			violent predators facility staff.
3	784.08(2)(a)	1st	Aggravated battery on a person 65
4			years of age or older.
5	784.081(1)	1st	Aggravated battery on specified
6			official or employee.
7	784.082(1)	1st	Aggravated battery by detained
8			person on visitor or other
9			detainee.
10	784.083(1)	1st	Aggravated battery on code
11			inspector.
12	790.07(4)	1st	Specified weapons violation
13			subsequent to previous conviction
14			of s. 790.07(1) or (2).
15	790.16(1)	1st	Discharge of a machine gun under
16			specified circumstances.
17	790.166(3)	2nd	Possessing, selling, using, or
18			attempting to use a hoax weapon
19			of mass destruction.
20	796.03	2nd	Procuring any person under 16
21			years for prostitution.
22	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
23			victim less than 12 years of age;
24			offender less than 18 years.
25	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
26			victim 12 years of age or older
27			but less than 16 years; offender
28			18 years or older.
29	806.01(2)	2nd	Maliciously damage structure by
30			fire or explosive.
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1	810.02(3)(a)	2nd	Burglary of occupied dwelling;
2			unarmed; no assault or battery.
3	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
4			unarmed; no assault or battery.
5	810.02(3)(d)	2nd	Burglary of occupied conveyance;
6			unarmed; no assault or battery.
7	812.014(2)(a)	1st	Property stolen, valued at
8			\$100,000 or more; cargo stolen
9			valued at \$50,000, or more;
10			property stolen while causing
11			other property damage; 1st degree
12			grand theft.
13	812.014(2)(b)2.	2nd	Property stolen, emergency
14			medical equipment; 2nd degree
15			grand theft.
16	812.019(2)	1st	Stolen property; initiates,
17			organizes, plans, etc., the theft
18			of property and traffics in
19			stolen property.
20	812.131(2)(a)	2nd	Robbery by sudden snatching.
21	812.133(2)(b)	1st	Carjacking; no firearm, deadly
22			weapon, or other weapon.
23	817.234(11)(c)	1st	Insurance fraud; property value
24			\$100,000 or more.
25	825.102(3)(b)	2nd	Neglecting an elderly person or
26			disabled adult causing great
27			bodily harm, disability, or
28			disfigurement.
29	825.1025(2)	2nd	Lewd or lascivious battery upon
30			an elderly person or disabled
31			adult.

1	825.103(2)(b)	2nd	Exploiting an elderly person or
2			disabled adult and property is
3			valued at \$20,000 or more, but
4			less than \$100,000.
5	827.03(3)(b)	2nd	Neglect of a child causing great
6			bodily harm, disability, or
7			disfigurement.
8	827.04(3)	3rd	Impregnation of a child under 16
9			years of age by person 21 years
10			of age or older.
11	837.05(2)	3rd	Giving false information about
12			alleged capital felony to a law
13			enforcement officer.
14	872.06	2nd	Abuse of a dead human body.
15	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
16			cocaine (or other drug prohibited
17			under s. 893.03(1)(a), (1)(b),
18			(1)(d), (2)(a), (2)(b), or
19			(2)(c)4.) within 1,000 feet of a
20			child care facility or school.
21	893.13(1)(e)1.	1st	Sell, manufacture, or deliver
22			cocaine or other drug prohibited
23			under s. 893.03(1)(a), (1)(b),
24			(1)(d), (2)(a), (2)(b), or
25			(2)(c)4., within 1,000 feet of
26			property used for religious
27			services or a specified business
28			site.
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1	893.13(4)(a)	1st	Deliver to minor cocaine (or
2			other s. 893.03(1)(a), (1)(b),
3			(1)(d), (2)(a), (2)(b), or
4			(2)(c)4. drugs).
5	893.135(1)(a)1.	1st	Trafficking in cannabis, more
6			than 25 lbs., less than 2,000
7			lbs.
8	893.135		
9	(1)(b)1.a.	1st	Trafficking in cocaine, more than
10			28 grams, less than 200 grams.
11	893.135		
12	(1)(c)1.a.	1st	Trafficking in illegal drugs,
13			more than 4 grams, less than 14
14			grams.
15	893.135		
16	(1)(d)1.	1st	Trafficking in phencyclidine,
17			more than 28 grams, less than 200
18			grams.
19	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
20			than 200 grams, less than 5
21			kilograms.
22	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
23			than 14 grams, less than 28
24			grams.
25	893.135		
26	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
27			grams or more, less than 14
28			grams.
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1	893.135		
2	(1)(h)1.a.	1st	Trafficking in
3			gamma-hydroxybutyric acid (GHB),
4			1 kilogram or more, less than 5
5			kilograms.
6	893.135		
7	(1)(i)1.a.	1st	Trafficking in 1,4-Butanediol, 1
8			kilogram or more, less than 5
9			kilograms.
10	893.135		
11	(1)(j)2.a.	1st	Trafficking in Phenethylamines,
12			10 grams or more, less than 200
13			grams.
14	896.101(5)(a)	3rd	Money laundering, financial
15			transactions exceeding \$300 but
16			less than \$20,000.
17	896.104(4)(a)1.	3rd	Structuring transactions to evade
18			reporting or registration
19			requirements, financial
20			transactions exceeding \$300 but
21			less than \$20,000.
22			(h) LEVEL 8
23	316.193		
24	(3)(c)3.a.	2nd	DUI manslaughter.
25	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
26	560.123(8)(b)2.	2nd	Failure to report currency or
27			payment instruments totaling or
28			exceeding \$20,000, but less than
29			\$100,000 by money transmitter.
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1	560.125(5)(b)	2nd	Money transmitter business by
2			unauthorized person, currency or
3			payment instruments totaling or
4			exceeding \$20,000, but less than
5			\$100,000.
6	655.50(10)(b)2.	2nd	Failure to report financial
7			transactions totaling or
8			exceeding \$20,000, but less than
9			\$100,000 by financial
10			institutions.
11	777.03(2)(a)	1st	Accessory after the fact, capital
12			felony.
13	782.04(4)	2nd	Killing of human without design
14			when engaged in act or attempt of
15			any felony other than arson,
16			sexual battery, robbery,
17			burglary, kidnapping, aircraft
18			piracy, or unlawfully discharging
19			bomb.
20	782.051(2)	1st	Attempted felony murder while
21			perpetrating or attempting to
22			perpetrate a felony not
23			enumerated in s. 782.04(3).
24	782.071(1)(b)	1st	Committing vehicular homicide and
25			failing to render aid or give
26			information.
27	782.072(2)	1st	Committing vessel homicide and
28			failing to render aid or give
29			information.
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1	790.161(3)	1st	Discharging a destructive device
2			which results in bodily harm or
3			property damage.
4	794.011(5)	2nd	Sexual battery, victim 12 years
5			or over, offender does not use
6			physical force likely to cause
7			serious injury.
8	800.04(4)	2nd	Lewd or lascivious battery.
9	806.01(1)	1st	Maliciously damage dwelling or
10			structure by fire or explosive,
11			believing person in structure.
12	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
13	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
14			or dangerous weapon.
15	810.02(2)(c)	1st	Burglary of a dwelling or
16			structure causing structural
17			damage or \$1,000 or more property
18			damage.
19	812.13(2)(b)	1st	Robbery with a weapon.
20	812.135(2)	1st	Home-invasion robbery.
21	825.102(2)	2nd	Aggravated abuse of an elderly
22			person or disabled adult.
23	<u>825.1025(2)</u>	<u>2nd</u>	<u>Lewd or lascivious battery upon</u>
24			<u>an elderly person or disabled</u>
25			<u>adult.</u>
26	825.103(2)(a)	1st	Exploiting an elderly person or
27			disabled adult and property is
28			valued at \$100,000 or more.
29	837.02(2)	2nd	Perjury in official proceedings
30			relating to prosecution of a
31			capital felony.

1	837.021(2)	2nd	Making contradictory statements
2			in official proceedings relating
3			to prosecution of a capital
4			felony.
5	860.121(2)(c)	1st	Shooting at or throwing any
6			object in path of railroad
7			vehicle resulting in great bodily
8			harm.
9	860.16	1st	Aircraft piracy.
10	893.13(1)(b)	1st	Sell or deliver in excess of 10
11			grams of any substance specified
12			in s. 893.03(1)(a) or (b).
13	893.13(2)(b)	1st	Purchase in excess of 10 grams of
14			any substance specified in s.
15			893.03(1)(a) or (b).
16	893.13(6)(c)	1st	Possess in excess of 10 grams of
17			any substance specified in s.
18			893.03(1)(a) or (b).
19	893.135(1)(a)2.	1st	Trafficking in cannabis, more
20			than 2,000 lbs., less than 10,000
21			lbs.
22	893.135		
23	(1)(b)1.b.	1st	Trafficking in cocaine, more than
24			200 grams, less than 400 grams.
25	893.135		
26	(1)(c)1.b.	1st	Trafficking in illegal drugs,
27			more than 14 grams, less than 28
28			grams.
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1	893.135		
2	(1)(d)1.b.	1st	Trafficking in phencyclidine,
3			more than 200 grams, less than
4			400 grams.
5	893.135		
6	(1)(e)1.b.	1st	Trafficking in methaqualone, more
7			than 5 kilograms, less than 25
8			kilograms.
9	893.135		
10	(1)(f)1.b.	1st	Trafficking in amphetamine, more
11			than 28 grams, less than 200
12			grams.
13	893.135		
14	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
15			grams or more, less than 28
16			grams.
17	893.135		
18	(1)(h)1.b.	1st	Trafficking in
19			gamma-hydroxybutyric acid (GHB),
20			5 kilograms or more, less than 10
21			kilograms.
22	893.135		
23	(1)(i)1.b.	1st	Trafficking in 1,4-Butanediol, 5
24			kilograms or more, less than 10
25			kilograms.
26	893.135		
27	(1)(j)2.b.	1st	Trafficking in Phenethylamines,
28			200 grams or more, less than 400
29			grams.
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1	895.03(1)	1st	Use or invest proceeds derived
2			from pattern of racketeering
3			activity.
4	895.03(2)	1st	Acquire or maintain through
5			racketeering activity any
6			interest in or control of any
7			enterprise or real property.
8	895.03(3)	1st	Conduct or participate in any
9			enterprise through pattern of
10			racketeering activity.
11	896.101(5)(b)	2nd	Money laundering, financial
12			transactions totaling or
13			exceeding \$20,000, but less than
14			\$100,000.
15	896.104(4)(a)2.	2nd	Structuring transactions to evade
16			reporting or registration
17			requirements, financial
18			transactions totaling or
19			exceeding \$20,000 but less than
20			\$100,000.
21	Section 4. This act shall take effect July 1, 2002.		
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 934

- The offense of "lewd or lascivious battery of an elderly person or disabled adult" is currently a second degree felony and is ranked in level 7 of the offense severity ranking chart of the Criminal Punishment Code. The CS ranks the offense in level 8 of the offense severity ranking chart. This ranking will correspond to the ranking for the offense of sexual battery.
- Changes the term disabled adult to disabled person in s. 825.1025, F.S. This allows for the prosecution of offenses under this statute which might otherwise be precluded because the disabled person was under the age of eighteen.
- Section 794.011, F.S., the sexual battery statute is amended by the CS to provide that when mental defect or mental incapacity of the victim is an issue, an expert witness who is licensed under chapter 490 (psychological services), chapter 458 (physicians), or chapter 459 (osteopathic medicine), may be utilized.