

By the Committee on Criminal Justice; and Senators Cowin and Fasano

307-2029-03

1                                   A bill to be entitled  
2           An act relating to mitigating factors in  
3           certain offenses; amending s. 921.0026, F.S.;  
4           providing that consent is not a mitigating  
5           factor for certain sexual offenses if the  
6           defendant is more than 5 years older than the  
7           victim, unless the court makes a written  
8           finding supported by the record that the victim  
9           knowingly and intentionally deceived the  
10          defendant about the victim's actual age;  
11          providing an effective date.

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

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15           Section 1. Subsection (4) is added to section  
16 921.0026, Florida Statutes, to read:

17           921.0026 Mitigating circumstances.--This section  
18 applies to any felony offense, except any capital felony,  
19 committed on or after October 1, 1998.

20           (4) The fact that the victim was an initiator, willing  
21 participant, aggressor, or provoker of the incident or  
22 consented to the incident is not a mitigating factor to any  
23 offense contained in chapter 794 or s. 800.04 in which consent  
24 is not a defense to the offense, if the defendant was more  
25 than 5 years older than the victim at the time of the offense,  
26 unless the court makes a written finding, supported by  
27 evidence in the record, that the victim knowingly and  
28 intentionally misled or knowingly and intentionally deceived  
29 the defendant regarding the victim's actual age.

30           Section 2. This act shall take effect upon becoming a  
31 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 232

- Provides that the fact that the victim was an initiator, willing participant, aggressor, or provoker of the incident or consented to the incident is not a mitigating factor (i.e., a factor that may be used to support a reduction in a sentence) to any offense contained in ch. 794, F.S. (sexual battery) or s. 800.04, F.S. (lewd or lascivious assaults or acts) in which consent is not a defense to the offense, if the victim was more than 5 years older than the victim at the time of the offense, unless the court makes a written finding, supported by evidence in the record, that the victim knowingly and intentionally mislead or knowingly and intentionally deceived the defendant regarding the victims's actual age.
- Changes the effective date of the act so that the act takes effect upon becoming a law.