

By Senator Siplin

19-1575-05

1 A bill to be entitled

2 An act relating to early release of certain

3 sexual offenders; amending ss. 794.05 and

4 800.04, F.S.; prohibiting a court from

5 suspending, deferring, or withholding

6 adjudication of guilt or imposition of sentence

7 for certain offenses involving a victim who is

8 younger than 18 years of age; providing that a

9 person who is convicted and sentenced to a term

10 of incarceration is not eligible for statutory

11 gain-time or any form of discretionary early

12 release; providing exceptions; providing an

13 effective date.

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

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17 Section 1. Section 794.05, Florida Statutes, is
18 amended to read:

19 794.05 Unlawful sexual activity with certain minors.--

20 (1) A person 24 years of age or older who engages in

21 sexual activity with a person 16 or 17 years of age commits a

22 felony of the second degree, punishable as provided in s.

23 775.082, s. 775.083, or s. 775.084. As used in this section,

24 "sexual activity" means oral, anal, or vaginal penetration by,

25 or union with, the sexual organ of another; however, sexual

26 activity does not include an act done for a bona fide medical

27 purpose.

28 ~~(2) Notwithstanding s. 948.01, a court may not~~

29 suspend, defer, or withhold adjudication of guilt or

30 imposition of sentence for any violation of subsection (1). A

31 person convicted and sentenced to a term of incarceration

1 under subsection (1) is not eligible for statutory gain-time
2 under s. 944.275 or any form of discretionary early release,
3 other than pardon or executive clemency or conditional medical
4 release under s. 947.149.

5 ~~(3)(2)~~ The provisions of this section do not apply to
6 a person 16 or 17 years of age who has had the disabilities of
7 nonage removed under chapter 743.

8 ~~(4)(3)~~ The victim's prior sexual conduct is not a
9 relevant issue in a prosecution under this section.

10 ~~(5)(4)~~ If an offense under this section directly
11 results in the victim giving birth to a child, paternity of
12 that child shall be established as described in chapter 742.
13 If it is determined that the offender is the father of the
14 child, the offender must pay child support pursuant to the
15 child support guidelines described in chapter 61.

16 Section 2. Section 800.04, Florida Statutes, is
17 amended to read:

18 800.04 Lewd or lascivious offenses committed upon or
19 in the presence of persons less than 16 years of age.--

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

21 (a) "Sexual activity" means the oral, anal, or vaginal
22 penetration by, or union with, the sexual organ of another or
23 the anal or vaginal penetration of another by any other
24 object; however, sexual activity does not include an act done
25 for a bona fide medical purpose.

26 (b) "Consent" means intelligent, knowing, and
27 voluntary consent, and does not include submission by
28 coercion.

29 (c) "Coercion" means the use of exploitation, bribes,
30 threats of force, or intimidation to gain cooperation or
31 compliance.

1 (d) "Victim" means a person upon whom an offense
2 described in this section was committed or attempted or a
3 person who has reported a violation of this section to a law
4 enforcement officer.

5 (2) PROHIBITED DEFENSES.--Neither the victim's lack of
6 chastity nor the victim's consent is a defense to the crimes
7 proscribed by this section.

8 (3) IGNORANCE OR BELIEF OF VICTIM'S AGE.--The
9 perpetrator's ignorance of the victim's age, the victim's
10 misrepresentation of his or her age, or the perpetrator's bona
11 fide belief of the victim's age cannot be raised as a defense
12 in a prosecution under this section.

13 (4) LEWD OR LASCIVIOUS BATTERY.--A person who:

14 (a) Engages in sexual activity with a person 12 years
15 of age or older but less than 16 years of age; or

16 (b) Encourages, forces, or entices any person less
17 than 16 years of age to engage in sadomasochistic abuse,
18 sexual bestiality, prostitution, or any other act involving
19 sexual activity

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21 commits lewd or lascivious battery, a felony of the second
22 degree, punishable as provided in s. 775.082, s. 775.083, or
23 s. 775.084.

24 (5) LEWD OR LASCIVIOUS MOLESTATION.--

25 (a) A person who intentionally touches in a lewd or
26 lascivious manner the breasts, genitals, genital area, or
27 buttocks, or the clothing covering them, of a person less than
28 16 years of age, or forces or entices a person under 16 years
29 of age to so touch the perpetrator, commits lewd or lascivious
30 molestation.

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1 (b) An offender 18 years of age or older who commits
2 lewd or lascivious molestation against a victim less than 12
3 years of age commits a felony of the first degree, punishable
4 as provided in s. 775.082, s. 775.083, or s. 775.084.

5 (c)1. An offender less than 18 years of age who
6 commits lewd or lascivious molestation against a victim less
7 than 12 years of age; or

8 2. An offender 18 years of age or older who commits
9 lewd or lascivious molestation against a victim 12 years of
10 age or older but less than 16 years of age

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12 commits a felony of the second degree, punishable as provided
13 in s. 775.082, s. 775.083, or s. 775.084.

14 (d) An offender less than 18 years of age who commits
15 lewd or lascivious molestation against a victim 12 years of
16 age or older but less than 16 years of age commits a felony of
17 the third degree, punishable as provided in s. 775.082, s.
18 775.083, or s. 775.084.

19 (6) LEWD OR LASCIVIOUS CONDUCT.--

20 (a) A person who:

21 1. Intentionally touches a person under 16 years of
22 age in a lewd or lascivious manner; or

23 2. Solicits a person under 16 years of age to commit a
24 lewd or lascivious act

25
26 commits lewd or lascivious conduct.

27 (b) An offender 18 years of age or older who commits
28 lewd or lascivious conduct commits a felony of the second
29 degree, punishable as provided in s. 775.082, s. 775.083, or
30 s. 775.084.

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1 (c) An offender less than 18 years of age who commits
2 lewd or lascivious conduct commits a felony of the third
3 degree, punishable as provided in s. 775.082, s. 775.083, or
4 s. 775.084.

5 (7) LEWD OR LASCIVIOUS EXHIBITION.--

6 (a) A person who:

7 1. Intentionally masturbates;

8 2. Intentionally exposes the genitals in a lewd or
9 lascivious manner; or

10 3. Intentionally commits any other sexual act that
11 does not involve actual physical or sexual contact with the
12 victim, including, but not limited to, sadomasochistic abuse,
13 sexual bestiality, or the simulation of any act involving
14 sexual activity

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16 in the presence of a victim who is less than 16 years of age,
17 commits lewd or lascivious exhibition.

18 (b) A person who:

19 1. Intentionally masturbates;

20 2. Intentionally exposes the genitals in a lewd or
21 lascivious manner; or

22 3. Intentionally commits any other sexual act that
23 does not involve actual physical or sexual contact with the
24 victim, including, but not limited to, sadomasochistic abuse,
25 sexual bestiality, or the simulation of any act involving
26 sexual activity

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28 live over a computer on-line service, Internet service, or
29 local bulletin board service and who knows or should know or
30 has reason to believe that the transmission is viewed on a
31 computer or television monitor by a victim in this state who

1 is less than 16 years of age, commits lewd or lascivious
2 exhibition. The fact that an undercover operative or law
3 enforcement officer was involved in the detection and
4 investigation of an offense under this paragraph shall not
5 constitute a defense to a prosecution under this paragraph.

6 (c) An offender 18 years of age or older who commits a
7 lewd or lascivious exhibition commits a felony of the second
8 degree, punishable as provided in s. 775.082, s. 775.083, or
9 s. 775.084.

10 (d) An offender less than 18 years of age who commits
11 a lewd or lascivious exhibition commits a felony of the third
12 degree, punishable as provided in s. 775.082, s. 775.083, or
13 s. 775.084.

14 (8) Notwithstanding s. 948.01, a court may not
15 suspend, defer, or withhold adjudication of guilt or
16 imposition of sentence for any violation of this section. A
17 person convicted and sentenced to a term of incarceration
18 under this section is not eligible for statutory gain-time
19 under s. 944.275 or any form of discretionary early release,
20 other than pardon or executive clemency or conditional medical
21 release under s. 947.149.

22 ~~(9)(8)~~ EXCEPTION.--A mother's breastfeeding of her
23 baby does not under any circumstance constitute a violation of
24 this section.

25 Section 3. This act shall take effect July 1, 2005.
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SENATE SUMMARY

Prohibits a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for certain offenses involving a victim who is younger than 18 years of age. Provides that a person who is convicted and sentenced to a term of incarceration is not eligible for statutory gain-time or any form of discretionary early release.