

1 A bill to be entitled
2 An act relating to high-risk offenders; providing a short
3 title; amending s. 794.011, F.S., and reenacting
4 subsections (3), (4), and (5), relating to persons
5 committing sexual battery upon certain persons, to
6 incorporate the amendment to s. 794.0115, F.S., in
7 references thereto; prohibiting a prosecutor who charges a
8 person with certain sexual battery violations from
9 presenting or entering into certain plea bargains;
10 providing that sexual predators who commit a sexual
11 battery against certain victims shall be sentenced to life
12 in prison without the possibility of parole or gain-time;
13 amending s. 794.0115, F.S.; increasing the mandatory
14 minimum sentence applicable to dangerous sexual felony
15 offenders; amending s. 794.065, F.S.; providing for county
16 or municipal ordinances relating to the residence of
17 persons subject to registration as sexual offenders or
18 designated as sexual predators; amending s. 1012.465,
19 F.S.; revising provisions relating to background screening
20 requirements for certain noninstructional school district
21 employees and contractors; requiring annual screening;
22 revising and providing definitions; providing for creation
23 of the Statewide Background Screening Clearinghouse for
24 background screening results for contractors; requiring
25 disposal of such results after a specified time; providing
26 for a statewide credential; providing requirements for
27 renewal of the credential; providing rulemaking authority;
28 requiring certain persons to inform their employer or the

29 party with whom they are under contract and the Department
 30 of Education of a charge of a disqualifying offense within
 31 a specified period; providing criminal penalties;
 32 reenacting s. 1012.32(2)(a), (b), and (c), F.S., relating
 33 to qualifications of personnel, to incorporate the
 34 amendments to s. 1012.465, F.S., in references thereto;
 35 providing an effective date.

36

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

38

39 Section 1. This act may be cited as the "Sexual Predator
 40 Elimination Act."

41 Section 2. Paragraph (a) of subsection (2) of section
 42 794.011, Florida Statutes, is amended, subsections (3), (4), and
 43 (5) are reenacted, and subsection (11) is added to that section,
 44 to read:

45 794.011 Sexual battery.--

46 (2)(a) A person 18 years of age or older who commits
 47 sexual battery upon, or in an attempt to commit sexual battery
 48 injures the sexual organs of, a person less than 12 years of age
 49 commits a capital felony, punishable as provided in ss. 775.082
 50 and 921.141. Any prosecutor who charges a person with a
 51 violation of this paragraph shall not present or enter into with
 52 the accused any plea bargain for a term of less than life in
 53 prison without the possibility of parole or eligibility for
 54 gain-time.

55 (3) A person who commits sexual battery upon a person 12
 56 years of age or older, without that person's consent, and in the

57 | process thereof uses or threatens to use a deadly weapon or uses
58 | actual physical force likely to cause serious personal injury
59 | commits a life felony, punishable as provided in s. 775.082, s.
60 | 775.083, s. 775.084, or s. 794.0115.

61 | (4) A person who commits sexual battery upon a person 12
62 | years of age or older without that person's consent, under any
63 | of the following circumstances, commits a felony of the first
64 | degree, punishable as provided in s. 775.082, s. 775.083, s.
65 | 775.084, or s. 794.0115:

66 | (a) When the victim is physically helpless to resist.

67 | (b) When the offender coerces the victim to submit by
68 | threatening to use force or violence likely to cause serious
69 | personal injury on the victim, and the victim reasonably
70 | believes that the offender has the present ability to execute
71 | the threat.

72 | (c) When the offender coerces the victim to submit by
73 | threatening to retaliate against the victim, or any other
74 | person, and the victim reasonably believes that the offender has
75 | the ability to execute the threat in the future.

76 | (d) When the offender, without the prior knowledge or
77 | consent of the victim, administers or has knowledge of someone
78 | else administering to the victim any narcotic, anesthetic, or
79 | other intoxicating substance which mentally or physically
80 | incapacitates the victim.

81 | (e) When the victim is mentally defective and the offender
82 | has reason to believe this or has actual knowledge of this fact.

83 | (f) When the victim is physically incapacitated.

84 (g) When the offender is a law enforcement officer,
85 correctional officer, or correctional probation officer as
86 defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is
87 certified under the provisions of s. 943.1395 or is an elected
88 official exempt from such certification by virtue of s. 943.253,
89 or any other person in a position of control or authority in a
90 probation, community control, controlled release, detention,
91 custodial, or similar setting, and such officer, official, or
92 person is acting in such a manner as to lead the victim to
93 reasonably believe that the offender is in a position of control
94 or authority as an agent or employee of government.

95 (5) A person who commits sexual battery upon a person 12
96 years of age or older, without that person's consent, and in the
97 process thereof does not use physical force and violence likely
98 to cause serious personal injury commits a felony of the second
99 degree, punishable as provided in s. 775.082, s. 775.083, s.
100 775.084, or s. 794.0115.

101 (11) Notwithstanding any other provision of law, any
102 person who has been designated as a sexual predator under s.
103 775.21 who is convicted of an offense under this chapter upon a
104 child under 12 years of age that is classified as a capital
105 felony, a life felony, or a first degree felony and who was 18
106 years of age or older at the time of the offense shall be
107 sentenced to life in prison without the possibility of parole or
108 eligibility for gain-time.

109 Section 3. Subsection (2) of section 794.0115, Florida
110 Statutes, is amended to read:

111 794.0115 Dangerous sexual felony offender; mandatory
 112 sentencing.--

113 (2) Any person who is convicted of a violation of s.
 114 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or
 115 (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); or s.
 116 847.0145; or of any similar offense under a former designation,
 117 which offense the person committed when he or she was 18 years
 118 of age or older, and the person:

119 (a) Caused serious personal injury to the victim as a
 120 result of the commission of the offense;

121 (b) Used or threatened to use a deadly weapon during the
 122 commission of the offense;

123 (c) Victimized more than one person during the course of
 124 the criminal episode applicable to the offense;

125 (d) Committed the offense while under the jurisdiction of
 126 a court for a felony offense under the laws of this state, for
 127 an offense that is a felony in another jurisdiction, or for an
 128 offense that would be a felony if that offense were committed in
 129 this state; or

130 (e) Has previously been convicted of a violation of s.
 131 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or
 132 (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); s.
 133 847.0145; of any offense under a former statutory designation
 134 which is similar in elements to an offense described in this
 135 paragraph; or of any offense that is a felony in another
 136 jurisdiction, or would be a felony if that offense were
 137 committed in this state, and which is similar in elements to an
 138 offense described in this paragraph,

139
 140 is a dangerous sexual felony offender, who must be sentenced to
 141 a mandatory minimum term of life in prison without the
 142 possibility of parole or eligibility for gain-time ~~25 years~~
 143 ~~imprisonment up to, and including, life imprisonment.~~

144 Section 4. Subsection (3) is added to section 794.065,
 145 Florida Statutes, to read:

146 794.065 Unlawful place of residence for persons convicted
 147 of certain sex offenses.--

148 (3) No state law shall prevent a county or municipality
 149 from enacting an ordinance relating to the residence of persons
 150 subject to registration as sexual offenders under s. 943.0435 or
 151 designated as sexual predators under s. 775.21 that restricts
 152 the residence of such persons within its jurisdiction as it may
 153 deem appropriate to protect its citizens.

154 Section 5. Section 1012.465, Florida Statutes, is amended
 155 to read:

156 1012.465 Background screening requirements for certain
 157 noninstructional school district employees and contractors;
 158 statewide clearinghouse.--

159 (1) Noninstructional school district employees or
 160 contractual personnel who are permitted access on school grounds
 161 when students are present, who have direct contact with
 162 students, or who have access to or control of school funds must
 163 meet level 2 screening requirements as described in s. 1012.32.
 164 For purposes of this section, the terms "contractual personnel"
 165 and "contractor" shall include any vendor, individual, or entity
 166 under contract with the school board who receives remuneration

167 for services performed for the school board but is not otherwise
 168 considered an employee of the school board. The terms also
 169 include any employee of a contractor who performs services for
 170 the school board under the contract.

171 (2) Annually ~~Every 5 years~~ following employment or entry
 172 into a contract in a capacity described in subsection (1),
 173 unless otherwise provided in subsection (3), each person who is
 174 so employed or under contract with the school district must meet
 175 level 2 screening requirements as described in s. 1012.32, at
 176 which time the school district shall request the Department of
 177 Law Enforcement to forward the fingerprints to the Federal
 178 Bureau of Investigation for the level 2 screening, and the
 179 background screening results for persons under contract in a
 180 capacity as described in subsection (1) shall be stored in the
 181 statewide clearinghouse as provided under section (3). If, for
 182 any reason following employment or entry into a contract in a
 183 capacity described in subsection (1), the fingerprints of a
 184 person who is so employed or under contract with the school
 185 district are not retained by the Department of Law Enforcement
 186 under s. 1012.32(3)(a) and (b), the person must file a complete
 187 set of fingerprints with the district school superintendent of
 188 the employing or contracting school district. Upon submission of
 189 fingerprints for this purpose, the school district shall request
 190 the Department of Law Enforcement to forward the fingerprints to
 191 the Federal Bureau of Investigation for the level 2 screening,
 192 and the fingerprints shall be retained by the Department of Law
 193 Enforcement under s. 1012.32(3)(a) and (b) and, for persons
 194 under contract in a capacity as described in subsection (1),

195 entered in the statewide clearinghouse database as provided
 196 under subsection (3). The cost of the state and federal criminal
 197 history check required by level 2 screening may be borne by the
 198 district school board, the contractor, or the person
 199 fingerprinted. Under penalty of perjury, each person who is
 200 employed or under contract in a capacity described in subsection
 201 (1) must agree to inform his or her employer or the party with
 202 whom he or she is under contract within 48 hours if convicted of
 203 any disqualifying offense while he or she is employed or under
 204 contract in that capacity.

205 (3)(a) The Department of Education, in cooperation with
 206 the Department of Law Enforcement, shall create the Statewide
 207 Background Screening Clearinghouse that shall maintain a
 208 database of background screening results for contractual
 209 personnel screened under subsection (2) and for contractual
 210 personnel seeking background screening clearance prior to
 211 employment or entry into a contract in a capacity described in
 212 subsection (1). The Department of Education shall provide each
 213 contractor who passes the required level 2 screening with a
 214 statewide credential, bearing a photograph of the contractor,
 215 indicating that the contractor has passed the level 2 screening.
 216 The credential shall be valid for 1 year at the end of which
 217 time the contractor must reapply for a background screening as
 218 provided under section (2) without requiring additional
 219 fingerprints to be taken, except as provided in subsection (2).
 220 The credential shall be accepted in all counties and in lieu of
 221 the background screening that would be required of the
 222 individual under this section during the period that the

223 credential is valid. The cost of the initial state and federal
 224 criminal history check required by level 2 screening may be
 225 borne by the district school board or the contractor. Screening
 226 results shall be disposed of after 12 months.

227 (b) Each year, each person who is under such contract with
 228 the school district as described in subsection (1) must apply to
 229 the local school district to renew his or her credential. The
 230 local school district shall repeat the background screening
 231 process pursuant to paragraph (a) and, if the individual
 232 continues to meet level 2 screening requirements, issue a
 233 renewed credential valid for 1 year. The individual so engaged
 234 shall present the school district with his or her renewed
 235 credential at the first opportunity following the expiration of
 236 the individual's previous credential.

237 (c) The Department of Education may adopt rules pursuant
 238 to ss. 120.536(1) and 120.54 to implement the provisions of this
 239 subsection.

240 (4)(3) If it is found that a person who is employed or
 241 under contract in a capacity described in subsection (1) does
 242 not meet the level 2 requirements, the person shall be
 243 immediately suspended from working in that capacity and shall
 244 remain suspended until final resolution of any appeals.

245 (5)(a) Each person who is employed or under contract in a
 246 capacity described in subsection (1) must agree as a condition
 247 of receiving the credential under subsection (3) to inform his
 248 or her employer or the party with whom he or she is under
 249 contract and the Department of Education within 48 hours if

250 charged with any disqualifying offense while he or she is
 251 employed or under contract in that capacity.

252 (b) A person who willfully fails to comply with paragraph
 253 (a) commits a felony of the third degree, punishable as provided
 254 in s. 775.082, s. 775.083, or s. 775.084.

255 Section 6. For the purpose of incorporating the amendment
 256 made by this act to section 1012.465, Florida Statutes, in
 257 references thereto, paragraphs (a), (b), and (c) of subsection
 258 (2) of section 1012.32, Florida Statutes, are reenacted to read:

259 1012.32 Qualifications of personnel.--

260 (2)(a) Instructional and noninstructional personnel who
 261 are hired or contracted to fill positions requiring direct
 262 contact with students in any district school system or
 263 university lab school shall, upon employment or engagement to
 264 provide services, undergo background screening as required under
 265 s. 1012.465 or s. 1012.56, whichever is applicable.

266 (b) Instructional and noninstructional personnel who are
 267 hired or contracted to fill positions in any charter school and
 268 members of the governing board of any charter school, in
 269 compliance with s. 1002.33(12)(g), shall, upon employment,
 270 engagement of services, or appointment, undergo background
 271 screening as required under s. 1012.465 or s. 1012.56, whichever
 272 is applicable, by filing with the district school board for the
 273 school district in which the charter school is located a
 274 complete set of fingerprints taken by an authorized law
 275 enforcement agency or an employee of the school or school
 276 district who is trained to take fingerprints.

277 (c) Instructional and noninstructional personnel who are
278 hired or contracted to fill positions requiring direct contact
279 with students in an alternative school that operates under
280 contract with a district school system shall, upon employment or
281 engagement to provide services, undergo background screening as
282 required under s. 1012.465 or s. 1012.56, whichever is
283 applicable, by filing with the district school board for the
284 school district to which the alternative school is under
285 contract a complete set of fingerprints taken by an authorized
286 law enforcement agency or an employee of the school or school
287 district who is trained to take fingerprints.

288
289 Fingerprints shall be submitted to the Department of Law
290 Enforcement for state processing and to the Federal Bureau of
291 Investigation for federal processing. Persons subject to this
292 subsection found through fingerprint processing to have been
293 convicted of a crime involving moral turpitude shall not be
294 employed, engaged to provide services, or serve in any position
295 requiring direct contact with students. Probationary persons
296 subject to this subsection terminated because of their criminal
297 record have the right to appeal such decisions. The cost of the
298 background screening may be borne by the district school board,
299 the charter school, the employee, the contractor, or a person
300 subject to this subsection.

301 Section 7. This act shall take effect upon becoming a law.