

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty → This bill prohibits a sexual predator from possessing a prescription drug for the purpose of treating erectile dysfunction.

B. EFFECT OF PROPOSED CHANGES:

Sexual Predators

Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
 - a. kidnapping or false imprisonment¹ where the victim is a minor and the defendant is not the victim's parent;
 - b. sexual battery;²
 - c. lewd or lascivious offenses;³
 - d. selling or buying a minors for child pornography;⁴ or
 - e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
 - a. kidnapping, false imprisonment or luring or enticing a child⁵ where the victim is a minor and the defendant is not the victim's parent,
 - b. sexual battery;⁶
 - c. procuring a person under the age of 18 for prostitution;⁷
 - d. lewd or lascivious offenses;
 - e. lewd or lascivious battery on an elderly person;⁸
 - f. promoting sexual performance by a child;⁹
 - g. selling or buying a minors for child pornography; or
 - h. a violation of a similar law of another jurisdiction.¹⁰

In order to be counted as a prior felony, the felony must have resulted in a conviction sentenced separately or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony.

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with

¹ s. 787.01, F.S. or s. 787.02, F.S.,

² See chapter 794. F.S.

³ s. 800.04, F.S.

⁴ s. 847.0145, F.S.

⁵ s. 787.025, F.S.

⁶ Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

⁷ s. 796.03, F.S.

⁸ s. 825.1025(2)(b), F.S.

⁹ s. 827.071, F.S.

¹⁰ Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

the DOC and provide specified information. Private correctional facilities are also governed by these requirements.

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

A sexual predator's failure to comply with registration requirements is a third degree felony.¹¹ A sexual predator is required to maintain registration for the duration of his or her life, unless the sexual predator has received a full pardon or has had a conviction set aside in a postconviction proceeding.

Erectile Dysfunction

The term erectile dysfunction (ED) covers a range of disorders, but usually refers to the inability to obtain an adequate erection for satisfactory sexual activity.¹² Approximately 30 million men in the United States have erectile dysfunction.¹³ According to the Department of Health (DOH), some ED drugs must be obtained by prescription while others (e.g. herbal remedies, etc...) may be obtained over-the-counter without a prescription.

Currently, there do not appear to be any statutory provisions prohibiting a specific group of persons (e.g. sexual predators) from possessing an ED drug (prescription or otherwise).¹⁴

Effect of the Bill

This bill would prohibit a sexual predator from possessing a prescription drug, as defined in s. 499.003(25), F.S.¹⁵, for the purpose of treating ED. A sexual predator who violates this provision once commits a second degree misdemeanor¹⁶. Subsequent violations are first degree misdemeanors¹⁷.

C. SECTION DIRECTORY:

Section 1. Creates s. 794.075, F.S.; prohibiting a sexual predator from possessing a prescription drug for the purpose of treating erectile dysfunction.

¹¹ s. 775.21(10), F.S.

¹² <http://www.mayoclinic.com/health/erectile-dysfunction/DS00162>

¹³ <http://www.mmhc-online.com/articles/impotency.html>

¹⁴ There is a statute that limits *how many doses* of ED drugs Medicaid recipients may receive. See s. 409.912(39), F.S.

¹⁵ "Prescription drug" is defined in s. 499.003(25), F.S., as any drug, including, but not limited to, finished dosage forms, or active ingredients subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act or s. 465.003(8), s. 499.007(12), or s. 499.0122(1)(b) or (c).

¹⁶ A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine. ss. 775.082 and 775.083.

¹⁷ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. ss. 775.082 and 775.083.

Section 2. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The ED drug market may lose revenue in that sexual predators will no longer be able to possess prescription drugs for the purpose of treating ED.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

2. Other:

See "Drafting Issues or Other Comments".

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There are a number of prescription and over-the-counter drugs that may cause erectile dysfunction.¹⁸ Many people take such drugs to treat other medical conditions they may have (e.g. diuretics and antihypertensives, antidepressants, anti-anxiety drugs and antiepileptic drugs, antihistamines, Parkinson's disease medications, prostate cancer medications, and chemotherapy medications).

¹⁸ <http://www.webmd.com/content/article/57/66229.htm>

Sexual predators who take have a medical condition which requires them to take a drug that, as a side effect, causes them to experience ED may challenge this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 15, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment:

- Removes the portion of the bill defining the term “drug”;
- Removes the portion of the bill that would make it a crime for a person to distribute a drug treating erectile dysfunction to a sexual predator; and
- Re-words the portion of the bill relating to sexual predators possessing erectile dysfunction drugs.