

By Senator Haridopolos

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See HB 251

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

1 time; providing for a statewide credential;
2 providing requirements for renewal of the
3 credential; providing rulemaking authority;
4 requiring certain persons to inform their
5 employer or the party with whom they are under
6 contract and the Department of Education of a
7 charge of a disqualifying offense within a
8 specified period; providing criminal penalties;
9 reenacting s. 1012.32(2)(a), (b), and (c),
10 F.S., relating to qualifications of personnel,
11 to incorporate the amendments to s. 1012.465,
12 F.S., in references thereto; providing
13 applicability; providing an effective date.
14

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

17 Section 1. This act may be cited as the "Sexual
18 Predator Elimination Act."

19 Section 2. Paragraph (a) of subsection (2) and
20 paragraph (c) of subsection (8) of section 794.011, Florida
21 Statutes, are amended, subsections (3), (4), and (5) are
22 reenacted, and subsection (11) is added to that section, to
23 read:

24 794.011 Sexual battery.--

25 (2)(a) A person 18 years of age or older who commits
26 sexual battery upon, or in an attempt to commit sexual battery
27 injures the sexual organs of, a person less than 12 years of
28 age commits a capital felony, punishable as provided in ss.
29 775.082 and 921.141. Any prosecutor who charges a person with
30 a violation of this paragraph shall not present or enter into
31 with the accused any plea bargain for a term of less than life

1 in prison without the possibility of parole or eligibility for
2 gain-time.

3 (3) A person who commits sexual battery upon a person
4 12 years of age or older, without that person's consent, and
5 in the process thereof uses or threatens to use a deadly
6 weapon or uses actual physical force likely to cause serious
7 personal injury commits a life felony, punishable as provided
8 in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

9 (4) A person who commits sexual battery upon a person
10 12 years of age or older without that person's consent, under
11 any of the following circumstances, commits a felony of the
12 first degree, punishable as provided in s. 775.082, s.
13 775.083, s. 775.084, or s. 794.0115:

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

15 (b) When the offender coerces the victim to submit by
16 threatening to use force or violence likely to cause serious
17 personal injury on the victim, and the victim reasonably
18 believes that the offender has the present ability to execute
19 the threat.

20 (c) When the offender coerces the victim to submit by
21 threatening to retaliate against the victim, or any other
22 person, and the victim reasonably believes that the offender
23 has the ability to execute the threat in the future.

24 (d) When the offender, without the prior knowledge or
25 consent of the victim, administers or has knowledge of someone
26 else administering to the victim any narcotic, anesthetic, or
27 other intoxicating substance which mentally or physically
28 incapacitates the victim.

29 (e) When the victim is mentally defective and the
30 offender has reason to believe this or has actual knowledge of
31 this fact.

1 (f) When the victim is physically incapacitated.

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

14 (5) A person who commits sexual battery upon a person
15 12 years of age or older, without that person's consent, and
16 in the process thereof does not use physical force and
17 violence likely to cause serious personal injury commits a
18 felony of the second degree, punishable as provided in s.
19 775.082, s. 775.083, s. 775.084, or s. 794.0115.

20 (8) Without regard to the willingness or consent of
21 the victim, which is not a defense to prosecution under this
22 subsection, a person who is in a position of familial or
23 custodial authority to a person less than 18 years of age and
24 who:

25 (c) Engages in any act with that person while the
26 person is less than 12 years of age which constitutes sexual
27 battery under paragraph (1)(h), or in an attempt to commit
28 sexual battery injures the sexual organs of such person
29 commits a capital or life felony, punishable pursuant to
30 subsection (2).

31

1 (11) Notwithstanding any other provision of law, any
2 person who has been designated as a sexual predator under s.
3 775.21 who is convicted of an offense under this chapter upon
4 a child under 12 years of age which is classified as a capital
5 felony, a life felony, or a first-degree felony and who was 18
6 years of age or older at the time of the offense shall be
7 sentenced to life in prison without the possibility of parole
8 or eligibility for gain-time.

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

11 794.0115 Dangerous sexual felony offender; mandatory
12 sentencing.--

13 (2) Any person who is convicted of a violation of s.
14 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or
15 (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); or s.
16 847.0145; or of any similar offense under a former
17 designation, which offense the person committed when he or she
18 was 18 years of age or older, and the person:

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

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

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

25 (d) Committed the offense while under the jurisdiction
26 of a court for a felony offense under the laws of this state,
27 for an offense that is a felony in another jurisdiction, or
28 for an offense that would be a felony if that offense were
29 committed in this state; or

30 (e) Has previously been convicted of a violation of s.
31 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or

1 (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); s.
2 847.0145; of any offense under a former statutory designation
3 which is similar in elements to an offense described in this
4 paragraph; or of any offense that is a felony in another
5 jurisdiction, or would be a felony if that offense were
6 committed in this state, and which is similar in elements to
7 an offense described in this paragraph,

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9 is a dangerous sexual felony offender, who must be sentenced
10 to a mandatory minimum term of life in prison without the
11 possibility of parole or eligibility for gain-time 25 years
12 imprisonment up to, and including, life imprisonment.

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

15 794.065 Unlawful place of residence for persons
16 convicted of certain sex offenses.--

17 (3) No state law shall prevent a county or
18 municipality from enacting an ordinance relating to the
19 residence of persons subject to registration as sexual
20 offenders under s. 943.0435 or designated as sexual predators
21 under s. 775.21 which restricts the residence of such persons
22 within its jurisdiction as it may deem appropriate to protect
23 its citizens.

24 Section 5. Section 1012.465, Florida Statutes, is
25 amended to read:

26 1012.465 Background screening requirements for certain
27 noninstructional school district employees and contractors;
28 statewide clearinghouse.--

29 (1) Noninstructional school district employees or
30 contractual personnel who are permitted access on school
31 grounds when students are present, who have direct contact

1 with students, or who have access to or control of school
2 funds must meet level 2 screening requirements as described in
3 s. 1012.32. For purposes of this section, the terms
4 "contractual personnel" and "contractor" shall include any
5 vendor, individual, or entity under contract with the school
6 board who receives remuneration for services performed for the
7 school board but is not otherwise considered an employee of
8 the school board. The terms also include any employee of a
9 contractor who performs services for the school board under
10 the contract.

11 (2) Annually ~~Every 5 years~~ following employment or
12 entry into a contract in a capacity described in subsection
13 (1), unless otherwise provided in subsection (3), each person
14 who is so employed or under contract with the school district
15 must meet level 2 screening requirements as described in s.
16 1012.32, at which time the school district shall request the
17 Department of Law Enforcement to forward the fingerprints to
18 the Federal Bureau of Investigation for the level 2 screening,
19 and the background screening results for persons under
20 contract in a capacity as described in subsection (1) shall be
21 stored in the statewide clearinghouse as provided under
22 section (3). If, for any reason following employment or entry
23 into a contract in a capacity described in subsection (1), the
24 fingerprints of a person who is so employed or under contract
25 with the school district are not retained by the Department of
26 Law Enforcement under s. 1012.32(3)(a) and (b), the person
27 must file a complete set of fingerprints with the district
28 school superintendent of the employing or contracting school
29 district. Upon submission of fingerprints for this purpose,
30 the school district shall request the Department of Law
31 Enforcement to forward the fingerprints to the Federal Bureau

1 of Investigation for the level 2 screening, and the
2 fingerprints shall be retained by the Department of Law
3 Enforcement under s. 1012.32(3)(a) and (b) and, for persons
4 under contract in a capacity as described in subsection (1),
5 entered in the statewide clearinghouse database as provided
6 under subsection (3). The cost of the state and federal
7 criminal history check required by level 2 screening may be
8 borne by the district school board, the contractor, or the
9 person fingerprinted. Under penalty of perjury, each person
10 who is employed or under contract in a capacity described in
11 subsection (1) must agree to inform his or her employer or the
12 party with whom he or she is under contract within 48 hours if
13 convicted of any disqualifying offense while he or she is
14 employed or under contract in that capacity.

15 (3)(a) The Department of Education, in cooperation
16 with the Department of Law Enforcement, shall create the
17 Statewide Background Screening Clearinghouse, which shall
18 maintain a database of background screening results for
19 contractual personnel screened under subsection (2) and for
20 contractual personnel seeking background screening clearance
21 prior to employment or entry into a contract in a capacity
22 described in subsection (1). The Department of Education shall
23 provide each contractor who passes the required level 2
24 screening with a statewide credential, bearing a photograph of
25 the contractor, indicating that the contractor has passed the
26 level 2 screening. The credential shall be valid for 1 year at
27 the end of which time the contractor must reapply for a
28 background screening as provided under subsection (2) without
29 additional fingerprints required, except as provided in
30 subsection (2). The credential shall be accepted in all
31 counties and in lieu of the background screening that would be

1 required of the individual under this section during the
2 period that the credential is valid. The cost of the initial
3 state and federal criminal history check required by level 2
4 screening may be borne by the district school board or the
5 contractor. Screening results shall be disposed of after 12
6 months.

7 (b) Each year, each person who is under such contract
8 with the school district as described in subsection (1) must
9 apply to the local school district to renew his or her
10 credential. The local school district shall repeat the
11 background screening process pursuant to paragraph (a) and, if
12 the individual continues to meet level 2 screening
13 requirements, issue a renewed credential valid for 1 year. The
14 individual so engaged shall present the school district with
15 his or her renewed credential at the first opportunity
16 following the expiration of the individual's previous
17 credential.

18 (c) The Department of Education may adopt rules
19 pursuant to ss. 120.536(1) and 120.54 to implement the
20 provisions of this subsection.

21 ~~(4)(3)~~ If it is found that a person who is employed or
22 under contract in a capacity described in subsection (1) does
23 not meet the level 2 requirements, the person shall be
24 immediately suspended from working in that capacity and shall
25 remain suspended until final resolution of any appeals.

26 (5)(a) Each person who is employed or under contract
27 in a capacity described in subsection (1) must agree as a
28 condition of receiving the credential under subsection (3) to
29 inform his or her employer or the party with whom he or she is
30 under contract and the Department of Education within 48 hours
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1 if charged with any disqualifying offense while he or she is
2 employed or under contract in that capacity.

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

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

11 1012.32 Qualifications of personnel.--

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

18 (b) Instructional and noninstructional personnel who
19 are hired or contracted to fill positions in any charter
20 school and members of the governing board of any charter
21 school, in compliance with s. 1002.33(12)(g), shall, upon
22 employment, engagement of services, or appointment, undergo
23 background screening as required under s. 1012.465 or s.
24 1012.56, whichever is applicable, by filing with the district
25 school board for the school district in which the charter
26 school is located a complete set of fingerprints taken by an
27 authorized law enforcement agency or an employee of the school
28 or school district who is trained to take fingerprints.

29 (c) Instructional and noninstructional personnel who
30 are hired or contracted to fill positions requiring direct
31 contact with students in an alternative school that operates

1 | under contract with a district school system shall, upon
2 | employment or engagement to provide services, undergo
3 | background screening as required under s. 1012.465 or s.
4 | 1012.56, whichever is applicable, by filing with the district
5 | school board for the school district to which the alternative
6 | school is under contract a complete set of fingerprints taken
7 | by an authorized law enforcement agency or an employee of the
8 | school or school district who is trained to take fingerprints.

9 |
10 | Fingerprints shall be submitted to the Department of Law
11 | Enforcement for state processing and to the Federal Bureau of
12 | Investigation for federal processing. Persons subject to this
13 | subsection found through fingerprint processing to have been
14 | convicted of a crime involving moral turpitude shall not be
15 | employed, engaged to provide services, or serve in any
16 | position requiring direct contact with students. Probationary
17 | persons subject to this subsection terminated because of their
18 | criminal record have the right to appeal such decisions. The
19 | cost of the background screening may be borne by the district
20 | school board, the charter school, the employee, the
21 | contractor, or a person subject to this subsection.

22 | Section 7. The amendments to ss. 794.011 and 794.0115,
23 | Florida Statutes, by this act shall apply to offenses
24 | committed on or after the effective date of this act.

25 | Section 8. This act shall take effect upon becoming a
26 | law.

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