

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 251 CS High-Risk Offenders
SPONSOR(S): Allen and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Local Government Council</u>	<u></u>	<u>Camechis</u>	<u>Hamby</u>
3) <u>Education Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill provides that the act may be cited as the "Sexual Predator Elimination Act".

The bill also provides that any person who has been designated a sexual predator who is convicted of an offense under ch. 794, F.S., upon a child under the age of 12 that is a capital, life or first degree felony and who was 18 or older at the time of the offense, must be sentenced to life in prison without the possibility of parole or eligibility for gain-time.

During the 2004 session, section 794.065, F.S., was created which makes it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense, against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. In recent months, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. HB 251 amends section 794.065, F.S., to provide that no state law shall prevent a county or municipality from enacting an ordinance restricting the residence of sexual predators or sexual offenders within its jurisdiction as it deems appropriate to protect its citizens.

Currently, section 794.0115, F.S., requires a judge to impose a minimum of a 25 year sentence and a maximum of a life sentence upon an offender who is sentenced for a violation of one of an enumerated list of sexual offenses and who:

- Caused serious personal injury to the victim as a result of the commission of the offense;
- Used or threatened to use a deadly weapon during the commission of the offense;
- Victimized more than one person during the course of the criminal episode applicable to the offense;
- Committed such offense while under the jurisdiction of the court for a felony offense or;
- Has previously been convicted of a violation of one of the enumerated offenses.

The bill amends this section to require the imposition of a life sentence.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases criminal penalties for certain offenses.

Safeguard individual liberty: The bill provides that no state law shall prevent a county or municipality from enacting an ordinance restricting the residence of sexual predators or sexual offenders within its jurisdiction as it deems appropriate to protect its citizens.

Promote personal responsibility: The bill provides for increased sanctions for certain criminal offenses.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that the act may be cited as the "Sexual Predator Elimination Act".

Sexual battery: Section 794.011, F.S., provides that a person 18 years of age or older who commits sexual battery upon, or attempts to commit sexual battery and injures the sexual organs of, a person less than 12 years of age commits a capital felony. This is commonly referred to as "capital sexual battery". A capital felony is punishable by a sentence of death or a sentence of life in prison.¹ However, the Florida Supreme Court has held that a sentence of death for the crime of "capital sexual battery" constitutes cruel and unusual punishment in violation of the Eighth Amendment.² As a result, the offense of capital sexual battery is punishable by a mandatory life sentence.³ A person who receives a life sentence must spend the rest of his or her life in prison and is not eligible for parole or any type of early release other than as a result of a pardon or the granting of clemency.⁴

The bill provides that any person who has been designated a sexual predator who is convicted of an offense under ch. 794, F.S., upon a child under the age of 12 that is a capital, life or first degree felony and who was 18 or older at the time of the offense must be sentenced to life in prison without the possibility of parole or eligibility for gain-time. [See DRAFTING ISSUES OR OTHER COMMENTS].

Unlawful place of residence for persons convicted of certain sex offenses: Before the 2004 legislative session, there was no statutory prohibition on where a sexual predator or sexual offender who was no longer on supervision could live.⁵ In other words, a sexual predator or sexual offender who was not on supervision could live wherever he or she wished but was required to report his or her residence to law enforcement. During the 2004 session, section 794.065, F.S., was created⁶ which makes it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense⁷, against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. The offense is a third degree felony if the sexual offense for which the offender was previously convicted was classified as a first degree felony or

¹ S. 775.082(1), F.S.

² *Buford v. State*, 403 So.2d 943 (Fla.1981).

³ *Huffman v. State*, 813 So.2d 10 (Fla. 2000); *Welsh v. State*, 850 So.2d 467, 468 (Fla. 2003)("The crime of sexual battery on a child less than twelve set forth in Florida Statutes section 794.011(2)(a) is referred to as "capital" sexual battery because the crime historically has been statutorily punishable by death. However, in [*Buford*], this Court determined that the sentence of death for the crime of 'capital sexual battery' constituted cruel and unusual punishment in violation of the Eighth Amendment."

⁴ s. 944.275(4)(b)3, F.S.

⁵ In cases in which the victim was a minor, a sexual predator is prohibited from *working* in a business, school, day care center, park, playground or other place where children regularly congregate. s. 775.21(10)(b), F.S. If a sexual predator or sexual offender is working at or attending an institution of higher education, this fact must be disclosed to FDLE who then, in turn, must inform the institution of higher education. ss. 775.21(6)(a)1b, 943.0435(2)(b)2, F.S.

⁶ See 2004-391, Laws of Florida.

⁷ Included are ss. 794.011, 800.04, 827.071 and 847.0145, F.S.

higher. The offense is a first degree misdemeanor if the sexual offense for which the offender was previously convicted was classified as a second or third degree felony.

In recent months, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. Generally, the ordinances appear to be modeled after section 794.065, F.S., but extend the distance from 1,000 feet to 2,500 feet. Many of the ordinances also prohibit an offender from living within 2,500 feet of places such as libraries, churches and bus stops that are not included in the state statute. By request of the staff of the Judiciary Committee, the Legislative Committee on Intergovernmental Relations surveyed 321 municipalities and all 67 counties to determine whether they had passed an ordinance restricting the residence of sexual offenders. As of October 17, 2005, of the 153 municipalities that responded, 50 municipalities indicated that they had passed ordinances and 14 had pending proposed ordinances. Of the 44 counties that responded, two had passed ordinances and 5 had pending proposed ordinances.

HB 251 amends section 794.065, F.S., to provide that no state law shall prevent a county or municipality from enacting an ordinance restricting the residence of sexual predators or sexual offenders within its jurisdiction as it deems appropriate to protect its citizens.

Dangerous sexual felony offender sentencing: Section 794.0115, F.S., is known as the “Dangerous Sexual Felony Offender Act”. The section provides that if a person is convicted of sexual battery⁸, lewd or lascivious battery⁹, lewd or lascivious molestation¹⁰, sexual performance by a child¹¹, selling or buying a minor¹², lewd or lascivious offenses committed upon an elderly person or disabled adult¹³ or luring or enticing a child¹⁴ where the offender was 18 years of age or older and the person:

- o Caused serious personal injury to the victim as a result of the commission of the offense;
- o Used or threatened to use a deadly weapon during the commission of the offense;
- o Victimized more than one person during the course of the criminal episode applicable to the offense;
- o Committed such offense while under the jurisdiction of the court for a felony offense or;
- o Has previously been convicted of a violation of one of the above offenses;

the person must be sentenced as a “dangerous sexual felony offender” to a mandatory minimum term of 25 years imprisonment up to and including life imprisonment. The enhanced sentencing provision could be applied to offenders upon the commission of a first offense if the facts of the case met one of the first four criteria listed above.

HB 251 amends this section of statute to provide that a person who is sentenced as a dangerous sexual felony offender must be sentenced to a mandatory minimum term of life in prison without the possibility of parole or eligibility for gain time.

⁸ s. 794.011(2), (3), (4), (5) or (8), F.S.

⁹ s. 800.04(4), F.S. This section requires proof that the offender had engaged in sexual activity with a person 12 years of age or older but less than 16 years of age. “Sexual activity” means the oral, anal or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. Consent is not a defense to this offense.

¹⁰ s. 800.04(5), F.S. This section requires proof that a person intentionally touched in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks or the clothing covering them of a person less than 16 years of age or forced or enticed the victim to so touch the offender.

¹¹ s. 827.071(2), (3), (4), F.S. This section makes it unlawful for a person to employ a child less than 18 years of age to engage in sexual performance.

¹² s. 847.0145, F.S. This section requires proof that the a person sold or purchased a minor with knowledge that as a consequence of the transfer, the minor will be portrayed in a visual depiction engaging in sexually explicit conduct.

¹³ s. 825.1025. This section prohibits various lewd or lascivious offenses committed against a person over the age of 60 or against a disabled adult.

¹⁴ s. 787.025, F.S. This section makes it a third degree felony to lure or entice a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose.

C. SECTION DIRECTORY:

Section 1. Provides that the act may be cited as the "Sexual Predator Elimination Act".

Section 1. Amends s. 794.011, F.S., relating to sexual battery.

Section 3. Amends s. 794.0015, F.S., increase minimum mandatory sentence applicable to dangerous sexual felony offenders.

Section 4. Amends s. 794.065, F.S., to prohibit state law which would prevent a county or municipal ordinance restricting residence of sexual offenders or predators.

Section 5. Provides that amendments to ss. 794.011 and 794.0115, F.S., by the act shall apply to offenses committed on or after effective date of act.

Section 6. Provides that the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

Expenditures:

The Criminal Justice Impact Conference is charged with forecasting the five year prison bed impact of filed bills on the Department of Corrections. On February 28, 2006, the conference determined the bill would have an insignificant impact over the next five years but could have a long term prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to

raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that any person who has been designated a sexual predator who is convicted of an offense under ch. 794, F.S., upon a child under the age of 12 that is a capital, life or first degree felony and who was 18 or older at the time of the offense must be sentenced to life in prison without the possibility of parole or eligibility for gain-time. It is not clear how this provision changes current law. Under s. 794.011(2)(a), F.S., a person 18 years of age or older who commits sexual battery on a person under the age of 12 commits a capital felony. For this offense, a capital felony is punishable by a life sentence. A person who is sentenced to life in prison is ineligible for parole or gain time. The other life or first degree felony offenses that are currently in this section of statute apply to a victim over the age of 12 or an offender under the age of 18 and the language of the bill would not apply to these offenses.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted an amendment which removed a provision from the original bill relating to criminal history checks of contractual school personnel.

As filed, the bill prohibited a prosecutor who charges a person with capital sexual battery from presenting or entering into with the accused a plea bargain for a term of less than life in prison without the possibility of parole or eligibility for gain-time. The Criminal Justice Committee adopted an amendment which removed this provision from the bill.