

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 applicability; 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) and paragraph  
 42 (c) of subsection (8) of section 794.011, Florida Statutes, are  
 43 amended, subsections (3), (4), and (5) are reenacted, and  
 44 subsection (11) is added to that section, 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 (8) Without regard to the willingness or consent of the  
102 victim, which is not a defense to prosecution under this  
103 subsection, a person who is in a position of familial or  
104 custodial authority to a person less than 18 years of age and  
105 who:

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

111           (11) Notwithstanding any other provision of law, any  
 112 person who has been designated as a sexual predator under s.  
 113 775.21 who is convicted of an offense under this chapter upon a  
 114 child under 12 years of age that is classified as a capital  
 115 felony, a life felony, or a first degree felony and who was 18  
 116 years of age or older at the time of the offense shall be  
 117 sentenced to life in prison without the possibility of parole or  
 118 eligibility for gain-time.

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

121           794.0115 Dangerous sexual felony offender; mandatory  
 122 sentencing.--

123           (2) Any person who is convicted of a violation of s.  
 124 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or  
 125 (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); or s.  
 126 847.0145; or of any similar offense under a former designation,  
 127 which offense the person committed when he or she was 18 years  
 128 of age or older, and the person:

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

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

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

135           (d) Committed the offense while under the jurisdiction of  
 136 a court for a felony offense under the laws of this state, for  
 137 an offense that is a felony in another jurisdiction, or for an

138 offense that would be a felony if that offense were committed in  
 139 this state; or

140 (e) Has previously been convicted of a violation of s.  
 141 787.025; s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or  
 142 (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); s.  
 143 847.0145; of any offense under a former statutory designation  
 144 which is similar in elements to an offense described in this  
 145 paragraph; or of any offense that is a felony in another  
 146 jurisdiction, or would be a felony if that offense were  
 147 committed in this state, and which is similar in elements to an  
 148 offense described in this paragraph,

149  
 150 is a dangerous sexual felony offender, who must be sentenced to  
 151 a mandatory minimum term of life in prison without the  
 152 possibility of parole or eligibility for gain-time 25 years  
 153 imprisonment up to, and including, life imprisonment.

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

156 794.065 Unlawful place of residence for persons convicted  
 157 of certain sex offenses.--

158 (3) No state law shall prevent a county or municipality  
 159 from enacting an ordinance relating to the residence of persons  
 160 subject to registration as sexual offenders under s. 943.0435 or  
 161 designated as sexual predators under s. 775.21 that restricts  
 162 the residence of such persons within its jurisdiction as it may  
 163 deem appropriate to protect its citizens.

164 Section 5. Section 1012.465, Florida Statutes, is amended  
 165 to read:

166           1012.465 Background screening requirements for certain  
 167 noninstructional school district employees and contractors;  
 168 statewide clearinghouse.--

169           (1) Noninstructional school district employees or  
 170 contractual personnel who are permitted access on school grounds  
 171 when students are present, who have direct contact with  
 172 students, or who have access to or control of school funds must  
 173 meet level 2 screening requirements as described in s. 1012.32.  
 174 For purposes of this section, the terms "contractual personnel"  
 175 and "contractor" shall include any vendor, individual, or entity  
 176 under contract with the school board who receives remuneration  
 177 for services performed for the school board but is not otherwise  
 178 considered an employee of the school board. The terms also  
 179 include any employee of a contractor who performs services for  
 180 the school board under the contract.

181           (2) Annually ~~Every 5 years~~ following employment or entry  
 182 into a contract in a capacity described in subsection (1),  
 183 unless otherwise provided in subsection (3), each person who is  
 184 so employed or under contract with the school district must meet  
 185 level 2 screening requirements as described in s. 1012.32, at  
 186 which time the school district shall request the Department of  
 187 Law Enforcement to forward the fingerprints to the Federal  
 188 Bureau of Investigation for the level 2 screening, and the  
 189 background screening results for persons under contract in a  
 190 capacity as described in subsection (1) shall be stored in the  
 191 statewide clearinghouse as provided under section (3). If, for  
 192 any reason following employment or entry into a contract in a  
 193 capacity described in subsection (1), the fingerprints of a

194 person who is so employed or under contract with the school  
195 district are not retained by the Department of Law Enforcement  
196 under s. 1012.32(3)(a) and (b), the person must file a complete  
197 set of fingerprints with the district school superintendent of  
198 the employing or contracting school district. Upon submission of  
199 fingerprints for this purpose, the school district shall request  
200 the Department of Law Enforcement to forward the fingerprints to  
201 the Federal Bureau of Investigation for the level 2 screening,  
202 and the fingerprints shall be retained by the Department of Law  
203 Enforcement under s. 1012.32(3)(a) and (b) and, for persons  
204 under contract in a capacity as described in subsection (1),  
205 entered in the statewide clearinghouse database as provided  
206 under subsection (3). The cost of the state and federal criminal  
207 history check required by level 2 screening may be borne by the  
208 district school board, the contractor, or the person  
209 fingerprinted. Under penalty of perjury, each person who is  
210 employed or under contract in a capacity described in subsection  
211 (1) must agree to inform his or her employer or the party with  
212 whom he or she is under contract within 48 hours if convicted of  
213 any disqualifying offense while he or she is employed or under  
214 contract in that capacity.

215 (3)(a) The Department of Education, in cooperation with  
216 the Department of Law Enforcement, shall create the Statewide  
217 Background Screening Clearinghouse that shall maintain a  
218 database of background screening results for contractual  
219 personnel screened under subsection (2) and for contractual  
220 personnel seeking background screening clearance prior to  
221 employment or entry into a contract in a capacity described in



222 subsection (1). The Department of Education shall provide each  
223 contractor who passes the required level 2 screening with a  
224 statewide credential, bearing a photograph of the contractor,  
225 indicating that the contractor has passed the level 2 screening.  
226 The credential shall be valid for 1 year at the end of which  
227 time the contractor must reapply for a background screening as  
228 provided under section (2) without requiring additional  
229 fingerprints to be taken, except as provided in subsection (2).  
230 The credential shall be accepted in all counties and in lieu of  
231 the background screening that would be required of the  
232 individual under this section during the period that the  
233 credential is valid. The cost of the initial state and federal  
234 criminal history check required by level 2 screening may be  
235 borne by the district school board or the contractor. Screening  
236 results shall be disposed of after 12 months.

237 (b) Each year, each person who is under such contract with  
238 the school district as described in subsection (1) must apply to  
239 the local school district to renew his or her credential. The  
240 local school district shall repeat the background screening  
241 process pursuant to paragraph (a) and, if the individual  
242 continues to meet level 2 screening requirements, issue a  
243 renewed credential valid for 1 year. The individual so engaged  
244 shall present the school district with his or her renewed  
245 credential at the first opportunity following the expiration of  
246 the individual's previous credential.

247 (c) The Department of Education may adopt rules pursuant  
248 to ss. 120.536(1) and 120.54 to implement the provisions of this  
249 subsection.

250        ~~(4)(3)~~ If it is found that a person who is employed or  
 251 under contract in a capacity described in subsection (1) does  
 252 not meet the level 2 requirements, the person shall be  
 253 immediately suspended from working in that capacity and shall  
 254 remain suspended until final resolution of any appeals.

255        (5)(a) Each person who is employed or under contract in a  
 256 capacity described in subsection (1) must agree as a condition  
 257 of receiving the credential under subsection (3) to inform his  
 258 or her employer or the party with whom he or she is under  
 259 contract and the Department of Education within 48 hours if  
 260 charged with any disqualifying offense while he or she is  
 261 employed or under contract in that capacity.

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

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

269        1012.32 Qualifications of personnel.--

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

276        (b) Instructional and noninstructional personnel who are  
 277 hired or contracted to fill positions in any charter school and

278 members of the governing board of any charter school, in  
279 compliance with s. 1002.33(12)(g), shall, upon employment,  
280 engagement of services, or appointment, undergo background  
281 screening as required under s. 1012.465 or s. 1012.56, whichever  
282 is applicable, by filing with the district school board for the  
283 school district in which the charter school is located a  
284 complete set of fingerprints taken by an authorized law  
285 enforcement agency or an employee of the school or school  
286 district who is trained to take fingerprints.

287 (c) Instructional and noninstructional personnel who are  
288 hired or contracted to fill positions requiring direct contact  
289 with students in an alternative school that operates under  
290 contract with a district school system shall, upon employment or  
291 engagement to provide services, undergo background screening as  
292 required under s. 1012.465 or s. 1012.56, whichever is  
293 applicable, by filing with the district school board for the  
294 school district to which the alternative school is under  
295 contract a complete set of fingerprints taken by an authorized  
296 law enforcement agency or an employee of the school or school  
297 district who is trained to take fingerprints.

298  
299 Fingerprints shall be submitted to the Department of Law  
300 Enforcement for state processing and to the Federal Bureau of  
301 Investigation for federal processing. Persons subject to this  
302 subsection found through fingerprint processing to have been  
303 convicted of a crime involving moral turpitude shall not be  
304 employed, engaged to provide services, or serve in any position  
305 requiring direct contact with students. Probationary persons

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306 | subject to this subsection terminated because of their criminal  
307 | record have the right to appeal such decisions. The cost of the  
308 | background screening may be borne by the district school board,  
309 | the charter school, the employee, the contractor, or a person  
310 | subject to this subsection.

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

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