

1 A bill to be entitled
 2 An act relating to sexual battery; amending s. 39.806,
 3 F.S.; providing grounds for terminating parental rights
 4 based on sexual battery; conforming a cross-reference;
 5 amending ss. 39.402, 39.521, and 39.811, F.S.; conforming
 6 cross-references; amending s. 775.089, F.S.; authorizing
 7 restitution to the victim of sexual battery or lewd or
 8 lascivious battery to pay for the expenses of the child;
 9 providing an exception; providing requirements is such
 10 restitution is ordered; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (j) is added to subsection (1) of
 15 section 39.806, Florida Statutes, and subsection (2) of that
 16 section is amended, to read:

17 39.806 Grounds for termination of parental rights.--

18 (1) Grounds for the termination of parental rights may be
 19 established under any of the following circumstances:

20 (j) When the parent has pled guilty or nolo contendere to,
 21 or is convicted of, a sexual battery as defined in s. 794.011,
 22 or a lewd or lascivious battery as defined in s. 800.04(4),
 23 which results in the victim giving birth to a child.

24 (2) Reasonable efforts to preserve and reunify families
 25 are not required if a court of competent jurisdiction has
 26 determined that any of the events described in paragraphs
 27 (1) (e) - (j) ~~(e) - (i)~~ have occurred.

28 Section 2. Paragraph (h) of subsection (8) of section

29 | 39.402, Florida Statutes, is amended to read:

30 | 39.402 Placement in a shelter.--

31 | (8)

32 | (h) The order for placement of a child in shelter care
33 | must identify the parties present at the hearing and must
34 | contain written findings:

35 | 1. That placement in shelter care is necessary based on
36 | the criteria in subsections (1) and (2).

37 | 2. That placement in shelter care is in the best interest
38 | of the child.

39 | 3. That continuation of the child in the home is contrary
40 | to the welfare of the child because the home situation presents
41 | a substantial and immediate danger to the child's physical,
42 | mental, or emotional health or safety which cannot be mitigated
43 | by the provision of preventive services.

44 | 4. That based upon the allegations of the petition for
45 | placement in shelter care, there is probable cause to believe
46 | that the child is dependent or that the court needs additional
47 | time, which may not exceed 72 hours, in which to obtain and
48 | review documents pertaining to the family in order to
49 | appropriately determine the risk to the child.

50 | 5. That the department has made reasonable efforts to
51 | prevent or eliminate the need for removal of the child from the
52 | home. A finding of reasonable effort by the department to
53 | prevent or eliminate the need for removal may be made and the
54 | department is deemed to have made reasonable efforts to prevent
55 | or eliminate the need for removal if:

56 | a. The first contact of the department with the family

57 | occurs during an emergency;

58 | b. The appraisal of the home situation by the department
59 | indicates that the home situation presents a substantial and
60 | immediate danger to the child's physical, mental, or emotional
61 | health or safety which cannot be mitigated by the provision of
62 | preventive services;

63 | c. The child cannot safely remain at home, either because
64 | there are no preventive services that can ensure the health and
65 | safety of the child or because, even with appropriate and
66 | available services being provided, the health and safety of the
67 | child cannot be ensured; or

68 | d. The parent or legal custodian is alleged to have
69 | committed any of the acts listed as grounds for expedited
70 | termination of parental rights in s. 39.806(1) (f) - (j) ~~(f) - (i)~~.

71 | 6. That the court notified the parents or legal custodians
72 | of the time, date, and location of the next dependency hearing
73 | and of the importance of the active participation of the parents
74 | or legal custodians in all proceedings and hearings.

75 | 7. That the court notified the parents or legal custodians
76 | of their right to counsel to represent them at the shelter
77 | hearing and at each subsequent hearing or proceeding, and the
78 | right of the parents to appointed counsel, pursuant to the
79 | procedures set forth in s. 39.013.

80 | Section 3. Paragraph (f) of subsection (1) of section
81 | 39.521, Florida Statutes, is amended to read:

82 | 39.521 Disposition hearings; powers of disposition.--

83 | (1) A disposition hearing shall be conducted by the court,
84 | if the court finds that the facts alleged in the petition for

85 dependency were proven in the adjudicatory hearing, or if the
86 parents or legal custodians have consented to the finding of
87 dependency or admitted the allegations in the petition, have
88 failed to appear for the arraignment hearing after proper
89 notice, or have not been located despite a diligent search
90 having been conducted.

91 (f) If the court places the child in an out-of-home
92 placement, the disposition order must include a written
93 determination that the child cannot safely remain at home with
94 reunification or family preservation services and that removal
95 of the child is necessary to protect the child. If the child has
96 been removed before the disposition hearing, the order must also
97 include a written determination as to whether, after removal,
98 the department has made a reasonable effort to reunify the
99 parent and child, if reasonable efforts are required. Reasonable
100 efforts to reunify are not required if the court has found that
101 any of the acts listed in s. 39.806(1) (f) - (j) ~~(f) - (i)~~ have
102 occurred. The department has the burden of demonstrating that it
103 has made reasonable efforts under this paragraph.

104 1. For the purposes of this paragraph, the term
105 "reasonable effort" means the exercise of reasonable diligence
106 and care by the department to provide the services ordered by
107 the court or delineated in the case plan.

108 2. In support of its determination as to whether
109 reasonable efforts have been made, the court shall:

110 a. Enter written findings as to whether or not prevention
111 or reunification efforts were indicated.

112 b. If prevention or reunification efforts were indicated,

113 include a brief written description of what appropriate and
 114 available prevention and reunification efforts were made.

115 c. Indicate in writing why further efforts could or could
 116 not have prevented or shortened the separation of the parent and
 117 child.

118 3. A court may find that the department has made a
 119 reasonable effort to prevent or eliminate the need for removal
 120 if:

121 a. The first contact of the department with the family
 122 occurs during an emergency;

123 b. The appraisal by the department of the home situation
 124 indicates that it presents a substantial and immediate danger to
 125 the child's safety or physical, mental, or emotional health
 126 which cannot be mitigated by the provision of preventive
 127 services;

128 c. The child cannot safely remain at home, either because
 129 there are no preventive services that can ensure the health and
 130 safety of the child or, even with appropriate and available
 131 services being provided, the health and safety of the child
 132 cannot be ensured; or

133 d. The parent is alleged to have committed any of the acts
 134 listed as grounds for expedited termination of parental rights
 135 in s. 39.806(1) (f) - (j) ~~(f) - (i)~~.

136 4. A reasonable effort by the department for reunification
 137 of the parent and child has been made if the appraisal of the
 138 home situation by the department indicates that the severity of
 139 the conditions of dependency is such that reunification efforts
 140 are inappropriate. The department has the burden of

141 demonstrating to the court that reunification efforts were
 142 inappropriate.

143 5. If the court finds that the prevention or reunification
 144 effort of the department would not have permitted the child to
 145 remain safely at home, the court may commit the child to the
 146 temporary legal custody of the department or take any other
 147 action authorized by this chapter.

148 Section 4. Paragraph (e) of subsection (6) of section
 149 39.811, Florida Statutes, is amended to read:

150 39.811 Powers of disposition; order of disposition.--

151 (6) The parental rights of one parent may be severed
 152 without severing the parental rights of the other parent only
 153 under the following circumstances:

154 (e) If the parent whose rights are being terminated meets
 155 any of the criteria specified in s. 39.806(1)(d) and (f)-(j)~~(f)~~
 156 ~~(i)~~.

157 Section 5. Subsection (1) of section 775.089, Florida
 158 Statutes, is amended to read:

159 775.089 Restitution.--

160 (1)(a) In addition to any punishment, the court shall
 161 order the defendant to make restitution to the victim for:

162 1. Damage or loss caused directly or indirectly by the
 163 defendant's offense; and

164 2. Damage or loss related to the defendant's criminal
 165 episode,

166
 167 unless it finds clear and compelling reasons not to order such
 168 restitution. Restitution may be monetary or nonmonetary

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169 restitution. The court shall make the payment of restitution a
170 condition of probation in accordance with s. 948.03. An order
171 requiring the defendant to make restitution to a victim does not
172 remove or diminish the requirement that the court order payment
173 to the Crimes Compensation Trust Fund pursuant to chapter 960.
174 Payment of an award by the Crimes Compensation Trust Fund shall
175 create an order of restitution to the Crimes Compensation Trust
176 Fund, unless specifically waived in accordance with subparagraph
177 (b)1.

178 (b)1. If the court does not order restitution, or orders
179 restitution of only a portion of the damages, as provided in
180 this section, it shall state on the record in detail the reasons
181 therefor.

182 2. An order of restitution entered as part of a plea
183 agreement is as definitive and binding as any other order of
184 restitution, and a statement to such effect must be made part of
185 the plea agreement. A plea agreement may contain provisions that
186 order restitution relating to criminal offenses committed by the
187 defendant to which the defendant did not specifically enter a
188 plea.

189 (c) The term "victim" as used in this section and in any
190 provision of law relating to restitution means each person who
191 suffers property damage or loss, monetary expense, or physical
192 injury or death as a direct or indirect result of the
193 defendant's offense or criminal episode, and also includes the
194 victim's estate if the victim is deceased, and the victim's next
195 of kin if the victim is deceased as a result of the offense.

196 (d) If a child is born as the result of a sexual battery

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197 as proscribed in s. 794.011, or a lewd or lascivious battery as
198 proscribed in s. 800.04(4), the court may order the defendant to
199 pay restitution to the victim for the monetary expenses related
200 to the support of the child, unless the parental rights of the
201 victim have been terminated pursuant to chapter 39. This
202 paragraph does not preclude the court from ordering any other
203 restitution to which the victim of a sexual battery or lewd or
204 lascivious battery may be entitled pursuant to this section,
205 regardless of whether or not a child is born. If restitution is
206 ordered:

207 1. The court shall give consideration to the child support
208 guideline schedules provided in s. 61.30 when determining the
209 amount of restitution.

210 2. The amount may not be reduced due to the offender's
211 inability to pay.

212 Section 6. This act shall take effect July 1, 2008.