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LEGISLATIVE ACTION

| Senate | . | House |
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| Comm: RCS | . | |
| 01/13/2014 | . | |
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The Committee on Criminal Justice (Bradley) recommended the following:

Senate Amendment

Delete lines 53 - 226
and insert:

(d) If a person who has previously been convicted of a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.



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11 787.02(3)(a)2. or 3.; s. 800.04; s. 825.1025; s. 847.0135(5); or
12 this chapter, excluding subsection (10) of this section, commits
13 sexual battery upon a person 12 years of age or older without
14 that person's consent, under any of the circumstances listed in
15 paragraph (e), such person commits a felony of the first degree,
16 punishable by a term of years not exceeding life or as provided
17 in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

18 (e) The following circumstances apply to paragraphs (a)-
19 (d):

20 1. ~~(a) When~~ The victim is physically helpless to resist.

21 2. ~~(b) When~~ The offender coerces the victim to submit by
22 threatening to use force or violence likely to cause serious
23 personal injury on the victim, and the victim reasonably
24 believes that the offender has the present ability to execute
25 the threat.

26 3. ~~(c) When~~ The offender coerces the victim to submit by
27 threatening to retaliate against the victim, or any other
28 person, and the victim reasonably believes that the offender has
29 the ability to execute the threat in the future.

30 4. ~~(d) When~~ The offender, without the prior knowledge or
31 consent of the victim, administers or has knowledge of someone
32 else administering to the victim any narcotic, anesthetic, or
33 other intoxicating substance that ~~which~~ mentally or physically
34 incapacitates the victim.

35 5. ~~(e) When~~ The victim is mentally defective, and the
36 offender has reason to believe this or has actual knowledge of
37 this fact.

38 6. ~~(f) When~~ The victim is physically incapacitated.

39 7. ~~(g) When~~ The offender is a law enforcement officer,



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40 correctional officer, or correctional probation officer as
41 defined ~~in~~ by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who
42 is certified under ~~the provisions of~~ s. 943.1395 or is an
43 elected official exempt from such certification by virtue of s.
44 943.253, or any other person in a position of control or
45 authority in a probation, community control, controlled release,
46 detention, custodial, or similar setting, and such officer,
47 official, or person is acting in such a manner as to lead the
48 victim to reasonably believe that the offender is in a position
49 of control or authority as an agent or employee of government.

50 (5) (a) A person 18 years of age or older who commits sexual
51 battery upon a person 12 years of age or older but younger than
52 18 years of age, without that person's consent, and in the
53 process thereof does not use physical force and violence likely
54 to cause serious personal injury commits a felony of the first
55 second degree, punishable as provided in s. 775.082, s. 775.083,
56 s. 775.084, or s. 794.0115.

57 (b) A person 18 years of age or older who commits sexual
58 battery upon a person 18 years of age or older, without that
59 person's consent, and in the process does not use physical force
60 and violence likely to cause serious personal injury commits a
61 felony of the second degree, punishable as provided in s.
62 775.082, s. 775.083, s. 775.084, or s. 794.0115.

63 (c) A person younger than 18 years of age who commits
64 sexual battery upon a person 12 years of age or older, without
65 that person's consent, and in the process does not use physical
66 force and violence likely to cause serious personal injury
67 commits a felony of the second degree, punishable as provided in
68 s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.



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69 (d) If a person who has previously been convicted of a
70 violation of s. 787.01(2) or s. 787.02(2), if the violation
71 involved a victim who was a minor and, in the course of
72 committing that violation, the defendant committed a sexual
73 battery under chapter 794 or a lewd act under s. 800.04 or s.
74 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
75 787.02(3)(a)2. or 3.; s. 800.04; s. 825.1025; s. 847.0135(5); or
76 this chapter, excluding subsection (10) of this section, commits
77 sexual battery upon a person 12 years of age or older, without
78 that person's consent, and in the process does not use physical
79 force and violence likely to cause serious personal injury, such
80 person commits a felony of the first degree, punishable as
81 provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

82 (6)(a) The offenses ~~offense~~ described in paragraphs (5)(a)-
83 (c) are ~~subsection (5)~~is included in any sexual battery offense
84 charged under subsection (3) ~~or subsection (4)~~.

85 (b) The offense described in paragraph (5)(a) is included
86 in an offense charged under paragraph (4)(a).

87 (c) The offense described in paragraph (5)(b) is included
88 in an offense charged under paragraph (4)(b).

89 (d) The offense described in paragraph (5)(c) is included
90 in an offense charged under paragraph (4)(c).

91 (e) The offense described in paragraph (5)(d) is included
92 in an offense charged under paragraph (4)(d).

93 (8) Without regard to the willingness or consent of the
94 victim, which is not a defense to prosecution under this
95 subsection, a person who is in a position of familial or
96 custodial authority to a person less than 18 years of age and
97 who:



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98 (b) Engages in any act with that person while the person is
99 12 years of age or older but younger ~~less~~ than 18 years of age
100 which constitutes sexual battery under paragraph (1)(h) commits
101 a felony of the first degree, punishable by a term of years not
102 exceeding life or as provided in s. 775.082, s. 775.083, or s.
103 775.084.

104 (9) For prosecution under paragraph (4)(a), paragraph
105 (4)(b), paragraph (4)(c), or paragraph (4)(d) which involves an
106 offense committed under any of the circumstances listed in
107 subparagraph (4)(e)7. ~~paragraph (4)(g),~~ acquiescence to a person
108 reasonably believed by the victim to be in a position of
109 authority or control does not constitute consent, and it is not
110 a defense that the perpetrator was not actually in a position of
111 control or authority if the circumstances were such as to lead
112 the victim to reasonably believe that the person was in such a
113 position.

114 (10) A ~~Any~~ person who falsely accuses a ~~any~~ person listed
115 in subparagraph (4)(e)7. ~~paragraph (4)(g)~~ or other person in a
116 position of control or authority as an agent or employee of
117 government of violating paragraph (4)(a), paragraph (4)(b),
118 paragraph (4)(c), or paragraph (4)(d) commits ~~(4)(g) is guilty~~
119 ~~of~~ a felony of the third degree, punishable as provided in s.
120 775.082, s. 775.083, or s. 775.084.

121 Section 2. Subsections (4) and (5) of section 800.04,
122 Florida Statutes, are amended to read:

123 800.04 Lewd or lascivious offenses committed upon or in the
124 presence of persons less than 16 years of age.—

125 (4) LEWD OR LASCIVIOUS BATTERY.—~~A person who:~~

126 (a) A person commits lewd or lascivious battery by:



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127 1. Engaging in sexual activity with a person 12 years of
128 age or older but less than 16 years of age; or

129 2. Encouraging, forcing, or enticing any person less than
130 16 years of age to engage in sadomasochistic abuse, sexual
131 bestiality, prostitution, or any other act involving sexual
132 activity.

133 (b) Except as provided in paragraph (c), an offender who
134 commits lewd or lascivious battery commits a felony of the
135 second degree, punishable as provided in s. 775.082, s. 775.083,
136 or s. 775.084.

137 (c) An offender 18 years of age or older who commits lewd
138 or lascivious battery commits a felony of the first degree,
139 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
140 if the offender has previously been convicted of a violation of
141 this section or a violation of s. 787.01(2) or s. 787.02(2), if
142 the violation involved a victim who was a minor and, in the
143 course of committing that violation, the defendant committed a
144 sexual battery under chapter 794 or a lewd act under s. 800.04
145 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
146 787.02(3)(a)2. or 3.; chapter 794, excluding s. 794.011(10); s.
147 800.04; s. 825.1025; or s. 847.0135(5).

148 ~~(a) Engages in sexual activity with a person 12 years of~~
149 ~~age or older but less than 16 years of age; or~~

150 ~~(b) Encourages, forces, or entices any person less than 16~~
151 ~~years of age to engage in sadomasochistic abuse, sexual~~
152 ~~bestiality, prostitution, or any other act involving sexual~~
153 ~~activity~~

154
155 ~~commits lewd or lascivious battery, a felony of the second~~



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156 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~
157 ~~775.084.~~

158 (5) LEWD OR LASCIVIOUS MOLESTATION.—

159 (a) A person who intentionally touches in a lewd or
160 lascivious manner the breasts, genitals, genital area, or
161 buttocks, or the clothing covering them, of a person less than
162 16 years of age, or forces or entices a person under 16 years of
163 age to so touch the perpetrator, commits lewd or lascivious
164 molestation.

165 (b) An offender 18 years of age or older who commits lewd
166 or lascivious molestation against a victim less than 12 years of
167 age commits a life felony, punishable as provided in s.
168 775.082(3)(a)4.

169 (c)1. An offender less than 18 years of age who commits
170 lewd or lascivious molestation against a victim less than 12
171 years of age; or

172 2. An offender 18 years of age or older who commits lewd or
173 lascivious molestation against a victim 12 years of age or older
174 but less than 16 years of age

175
176 commits a felony of the second degree, punishable as provided in
177 s. 775.082, s. 775.083, or s. 775.084.

178 (d) An offender less than 18 years of age who commits lewd
179 or lascivious molestation against a victim 12 years of age or
180 older but less than 16 years of age commits a felony of the
181 third degree, punishable as provided in s. 775.082, s. 775.083,
182 or s. 775.084.

183 (e) An offender 18 years of age or older who commits lewd
184 or lascivious molestation against a victim 12 years of age or



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185 older but less than 16 years of age commits a felony of the
186 first degree, punishable as provided in s. 775.082, s. 775.083,
187 or s. 775.084, if the offender has previously been convicted of
188 a violation of this section or a violation of s. 787.01(2) or s.
189 787.02(2), if the violation involved a victim who was a minor
190 and, in the course of committing that violation, the defendant
191 committed a sexual battery under chapter 794 or a lewd act under
192 s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2.
193 or 3.; s. 787.02(3)(a)2. or 3.; chapter 794, excluding s.
194 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).
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