

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 868

INTRODUCER: Senator Stewart

SUBJECT: Sexual Battery on a Mentally Incapacitated Person

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

## I. Summary:

SB 868 amends s. 794.011, F.S., to change the definition of “mentally incapacitated,” to mean temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, an anesthetic, or an intoxicating substance.

The bill removes the previous requirements that a narcotic, anesthetic, or intoxicating substance be administered without a person’s consent or due to any other act committed upon that person without his or her consent, in order to be found “mentally incapacitated.”

Current law provides specified circumstances in which the crime of sexual battery may be charged as a first degree felony. One such circumstance is when the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that renders the victim *mentally incapacitated* or physically incapacitated. The change in the definition of mentally incapacitated means an offense of sexual battery which occurs against a victim who is under the influence of a substance is a first degree felony.

There may be a positive indeterminate prison bed impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2022.

## II. Present Situation:

### Sexual Battery

Section 794.011, F.S., defines the crime of “sexual battery” to mean 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; however, sexual battery does not include an act done for a bona fide medical purpose.<sup>1</sup> Sexual battery offenses are categorized by certain factors including the offender's age, the victim's age, and specified circumstances. Generally, absent any specified circumstances, a sexual battery is a second degree felony.<sup>2</sup>

Section 794.011(4), F.S., provides that when sexual battery is committed and any of the below specified circumstances are present, the person commits a first degree felony. Florida law punishes first degree felonies in one of two ways. Generally, a first degree felony is punishable by up to 30 years of imprisonment.<sup>3</sup> However, when specifically provided for in statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment.<sup>4</sup>

Section 794.011(4)(a) and (d), F.S., provides it a first degree felony punishable by imprisonment for a term of years not exceeding life when:

- A person 18 years of age or older commits sexual battery on a person 12 years of age or older, but younger than 18 years of age without that person's consent, under any of the specified circumstances.
- A person commits sexual battery on a person 12 years of age or older without that person's consent, under any of the specified circumstances, and that person was previously convicted of certain crimes.<sup>5</sup>

Section 794.011(4)(b) and (c), F.S., provides it is a first degree felony punishable by up to 30 years of imprisonment when:

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older without that person's consent, under any of the specified circumstances.
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older without that person's consent, under any of the specified circumstances.

Section 794.011(4)(e), F.S., provides the following specified circumstances that apply to the offenses described above:

- The victim is physically helpless<sup>6</sup> to resist;

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<sup>1</sup> Section 794.011(1)(h), F.S.

<sup>2</sup> The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 775.083, provides first degree felonies may also be punishable by a fine not exceeding \$10,000.

<sup>4</sup> Section 775.082, F.S.

<sup>5</sup> The specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.

<sup>6</sup> Section 794.011(1)(e), F.S., provides that "physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

- The offender coerces the victim to submit by threatening the use of force or violence likely to cause serious personal injury to the victim, and the victim reasonably believes that the offender has the present ability to execute the threat;
- The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future;
- The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates<sup>7</sup> the victim;
- The victim is mentally defective,<sup>8</sup> and the offender has reason to believe this or has actual knowledge of the fact;
- The victim is physically incapacitated; or
- The offender is a law enforcement officer, correctional officer, or correctional probation officer, or is an elected official exempt from such certification,<sup>9</sup> or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of the government.

### ***Mental Incapacitation***

A mentally incapacitated person is “temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.”<sup>10</sup>

A person is not deemed “mentally incapacitated,” under s. 794.011, F.S., if they knowingly and voluntarily consumed a narcotic, anesthetic, or other intoxicating substance. Accordingly, “the Florida sexual battery statute does not place voluntary drug or alcohol consumption on the same footing as involuntary consumption; if they were to be treated as equivalent, the statute would say so.”<sup>11</sup>

With respect to the issue of consent to sexual activity, “[t]he prevailing view is that voluntary consumption of drugs or alcohol, does not, without more, render consent involuntary.”<sup>12</sup> However, evidence of the victim’s mental incapacity is admissible to prove that the consent to sexual activity was not intelligent, knowing, or voluntary; and the court must instruct the jury accordingly.<sup>13</sup>

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<sup>7</sup> Section 794.011(1)(j), F.S., provides that “physically incapacitated” means bodily impaired or handicapped and substantially limited in ability to resist or flee.

<sup>8</sup> Section 794.011(1)(b), F.S., provides that “mentally defective” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

<sup>9</sup> Under s. 943.253, F.S.

<sup>10</sup> Section 794.011(1)(c), F.S.

<sup>11</sup> *Coley v. State*, 616 So. 2d 1017, 1023 (Fla. 3d DCA 1993).

<sup>12</sup> *Id.*

<sup>13</sup> *See* s. 794.022(4), F.S.

### III. Effect of Proposed Changes:

The bill amends s. 794.011, F.S., to change the definition of “mentally incapacitated,” to mean temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, an anesthetic, or an intoxicating substance (substance).

The bill removes the previous requirements that the substance *be administered without a person’s consent or due to any other act committed upon that person without his or her consent*, in order to be found “mentally incapacitated.”

Currently, when a person is a victim of a sexual battery and is “mentally incapacitated” the offense is a first degree felony, as described in the Present Situation. By eliminating the requirement that the victim’s mental incapacitation is due to being under the influence of a substance that was administered *without the victim’s consent* means that a sexual battery offense against a victim who is under the influence of a substance is a first degree felony. Currently, it is a second degree felony when a person commits a sexual battery against a victim who was voluntarily under the influence of a substance.

Specifically, the change of the definition “mentally incapacitated” means that a sexual battery is a first degree felony when:

- A person 18 years of age or older commits sexual battery on a person 12 years of age or older, but younger than 18 years of age without that person’s consent, and *the victim is mentally incapacitated*, and the offender has reason to believe this or has actual knowledge of this fact.
- A person commits sexual battery on a person 12 years of age or older without that person’s consent, and *the victim is mentally incapacitated*, and the offender has reason to believe this or has actual knowledge of this fact, and that person was previously convicted of specified crimes.
- A person 18 years of age or older commits sexual battery on a person 18 years of age or older without that person’s consent, and *the victim is mentally incapacitated*, and the offender has reason to believe this or has actual knowledge of this fact.
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older without that person’s consent, and *the victim is mentally incapacitated*, and the offender has reason to believe this or has actual knowledge of this fact.

The bill takes effect October 1, 2022.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

#### B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation, has not yet reviewed the bill. The bill increases the number of sexual battery cases that will carry a penalty of a first degree felony. Thus this bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 794.011 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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