

By Senator Stewart

13-01049-22

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1 A bill to be entitled
2 An act relating to sexual battery on a mentally
3 incapacitated person; amending s. 794.011, F.S.;
4 revising the definition of the term "mentally
5 incapacitated"; revising provisions concerning sexual
6 battery upon a person who is mentally incapacitated;
7 providing an effective date.
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9 Be It Enacted by the Legislature of the State of Florida:
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11 Section 1. Paragraph (c) of subsection (1) and subsection
12 (4) of section 794.011, Florida Statutes, are amended to read:

13 794.011 Sexual battery.—

14 (1) As used in this chapter:

15 (c) "Mentally incapacitated" means temporarily incapable of
16 appraising or controlling a person's own conduct due to the
17 influence of a narcotic, an anesthetic, or an intoxicating
18 substance ~~administered without his or her consent or due to any~~
19 ~~other act committed upon that person without his or her consent.~~

20 (4) (a) A person 18 years of age or older who commits sexual
21 battery upon a person 12 years of age or older but younger than
22 18 years of age without that person's consent, under any of the
23 circumstances listed in paragraph (e), commits a felony of the
24 first degree, punishable by a term of years not exceeding life
25 or as provided in s. 775.082, s. 775.083, s. 775.084, or s.
26 794.0115.

27 (b) A person 18 years of age or older who commits sexual
28 battery upon a person 18 years of age or older without that
29 person's consent, under any of the circumstances listed in

13-01049-22

2022868__

30 paragraph (e), commits a felony of the first degree, punishable
31 as provided in s. 775.082, s. 775.083, s. 775.084, or s.
32 794.0115.

33 (c) A person younger than 18 years of age who commits
34 sexual battery upon a person 12 years of age or older without
35 that person's consent, under any of the circumstances listed in
36 paragraph (e), commits a felony of the first degree, punishable
37 as provided in s. 775.082, s. 775.083, s. 775.084, or s.
38 794.0115.

39 (d) A person commits a felony of the first degree,
40 punishable by a term of years not exceeding life or as provided
41 in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the
42 person commits sexual battery upon a person 12 years of age or
43 older without that person's consent, under any of the
44 circumstances listed in paragraph (e), and such person was
45 previously convicted of a violation of:

46 1. Section 787.01(2) or s. 787.02(2) when the violation
47 involved a victim who was a minor and, in the course of
48 committing that violation, the defendant committed against the
49 minor a sexual battery under this chapter or a lewd act under s.
50 800.04 or s. 847.0135(5);

51 2. Section 787.01(3)(a)2. or 3.;

52 3. Section 787.02(3)(a)2. or 3.;

53 4. Section 800.04;

54 5. Section 825.1025;

55 6. Section 847.0135(5); or

56 7. This chapter, excluding subsection (10) of this section.

57 (e) The following circumstances apply to paragraphs (a)-

58 (d):

13-01049-22

2022868__

- 59 1. The victim is physically helpless to resist.
- 60 2. The offender coerces the victim to submit by threatening
61 to use force or violence likely to cause serious personal injury
62 on the victim, and the victim reasonably believes that the
63 offender has the present ability to execute the threat.
- 64 3. The offender coerces the victim to submit by threatening
65 to retaliate against the victim, or any other person, and the
66 victim reasonably believes that the offender has the ability to
67 execute the threat in the future.
- 68 4. The victim is mentally incapacitated, and the offender
69 has reason to believe this or has actual knowledge of this fact
70 ~~offender, without the prior knowledge or consent of the victim,~~
71 ~~administers or has knowledge of someone else administering to~~
72 ~~the victim any narcotic, anesthetic, or other intoxicating~~
73 ~~substance that mentally or physically incapacitates the victim.~~
- 74 5. The victim is mentally defective, and the offender has
75 reason to believe this or has actual knowledge of this fact.
- 76 6. The victim is physically incapacitated.
- 77 7. The offender is a law enforcement officer, correctional
78 officer, or correctional probation officer as defined in s.
79 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified
80 under s. 943.1395 or is an elected official exempt from such
81 certification by virtue of s. 943.253, or any other person in a
82 position of control or authority in a probation, community
83 control, controlled release, detention, custodial, or similar
84 setting, and such officer, official, or person is acting in such
85 a manner as to lead the victim to reasonably believe that the
86 offender is in a position of control or authority as an agent or
87 employee of government.

13-01049-22

2022868__

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Section 2. This act shall take effect October 1, 2022.