

By Senator Stewart

17-00892-23

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1                   A bill to be entitled  
 2       An act relating to sexual battery on mentally  
 3       incapacitated persons; amending s. 794.011, F.S.;  
 4       providing definitions; revising terminology;  
 5       prohibiting sexual battery upon a person who is  
 6       involuntarily or voluntarily mentally incapacitated;  
 7       providing criminal penalties; amending ss. 92.565 and  
 8       787.06, F.S.; conforming provisions to changes made by  
 9       the act; providing an effective date.

10  
 11 Be It Enacted by the Legislature of the State of Florida:

12  
 13       Section 1. Paragraph (1) is added to subsection (1) of  
 14       section 794.011, Florida Statutes, present paragraphs (c) and  
 15       (d) of that subsection are redesignated as paragraphs (d) and  
 16       (c), respectively, and present paragraph (d) of that subsection  
 17       and paragraph (e) of subsection (4) are amended, to read:

18       794.011 Sexual battery.—

19       (1) As used in this chapter:

20       (c)~~(d)~~ "Involuntarily mentally incapacitated" means  
 21       temporarily incapable of appraising or controlling a person's  
 22       own conduct due to the influence of a narcotic, anesthetic, or  
 23       intoxicating substance administered without his or her consent  
 24       or due to any other act committed upon that person without his  
 25       or her consent.

26       (1) "Voluntarily mentally incapacitated" means temporarily  
 27       incapable of appraising or controlling a person's own conduct  
 28       due to the influence of a narcotic, anesthetic, or intoxicating  
 29       substance administered with his or her consent or due to any

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30 other act committed upon that person with his or her consent.

31 (4)

32 (e) The following circumstances apply to paragraphs (a)-  
33 (d):

34 1. The victim is physically helpless to resist.

35 2. The offender coerces the victim to submit by threatening  
36 to use force or violence likely to cause serious personal injury  
37 on the victim, and the victim reasonably believes that the  
38 offender has the present ability to execute the threat.

39 3. The offender coerces the victim to submit by threatening  
40 to retaliate against the victim, or any other person, and the  
41 victim reasonably believes that the offender has the ability to  
42 execute the threat in the future.

43 4. The offender, without the prior knowledge or consent of  
44 the victim, administers or has knowledge of someone else  
45 administering to the victim any narcotic, anesthetic, or other  
46 intoxicating substance that involuntarily or voluntarily  
47 mentally incapacitates or physically incapacitates the victim.

48 5. The victim is mentally defective, and the offender has  
49 reason to believe this or has actual knowledge of this fact.

50 6. The victim is physically incapacitated.

51 7. The offender is a law enforcement officer, correctional  
52 officer, or correctional probation officer as defined in s.  
53 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified  
54 under s. 943.1395 or is an elected official exempt from such  
55 certification by virtue of s. 943.253, or any other person in a  
56 position of control or authority in a probation, community  
57 control, controlled release, detention, custodial, or similar  
58 setting, and such officer, official, or person is acting in such

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59 a manner as to lead the victim to reasonably believe that the  
60 offender is in a position of control or authority as an agent or  
61 employee of government.

62 Section 2. Paragraph (a) of subsection (2) of section  
63 92.565, Florida Statutes, is amended to read:

64 92.565 Admissibility of confession in sexual abuse cases.—

65 (2) In any criminal action in which the defendant is  
66 charged with a crime against a victim under s. 787.06(3),  
67 involving commercial sexual activity; s. 794.011; s. 794.05; s.  
68 800.04; s. 826.04; s. 827.03, involving sexual abuse; s. 827.04,  
69 involving sexual abuse; s. 827.071; or s. 847.0135(5), or any  
70 other crime involving sexual abuse of another, or with any  
71 attempt, solicitation, or conspiracy to commit any of these  
72 crimes, the defendant's memorialized confession or admission is  
73 admissible during trial without the state having to prove a  
74 corpus delicti of the crime if the court finds in a hearing  
75 conducted outside the presence of the jury that the state is  
76 unable to show the existence of each element of the crime, and  
77 having so found, further finds that the defendant's confession  
78 or admission is trustworthy. Factors which may be relevant in  
79 determining whether the state is unable to show the existence of  
80 each element of the crime include, but are not limited to, the  
81 fact that, at the time the crime was committed, the victim was:

82 (a) Physically helpless, involuntarily mentally  
83 incapacitated, voluntarily mentally incapacitated, or mentally  
84 defective, as those terms are defined in s. 794.011;

85 Section 3. Paragraph (g) of subsection (3) of section  
86 787.06, Florida Statutes, is amended to read:

87 787.06 Human trafficking.—

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88 (3) Any person who knowingly, or in reckless disregard of  
89 the facts, engages in human trafficking, or attempts to engage  
90 in human trafficking, or benefits financially by receiving  
91 anything of value from participation in a venture that has  
92 subjected a person to human trafficking:

93 (g) For commercial sexual activity in which any child  
94 younger than 18 years of age or an adult believed by the person  
95 to be a child younger than 18 years of age, or in which any  
96 person who is mentally defective, involuntarily ~~or~~ mentally  
97 incapacitated, or voluntarily mentally incapacitated, as those  
98 terms are defined in s. 794.011(1), is involved commits a life  
99 felony, punishable as provided in s. 775.082(3)(a)6., s.  
100 775.083, or s. 775.084.

101  
102 For each instance of human trafficking of any individual under  
103 this subsection, a separate crime is committed and a separate  
104 punishment is authorized.

105 Section 4. This act shall take effect October 1, 2023.