

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Hinson offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Paragraph (a) of subsection (2) of section
6 794.011, Florida Statutes, is amended to read:

7 794.011 Sexual battery.—

8 (2)(a) A person 18 years of age or older who commits
9 sexual battery upon, or in an attempt to commit sexual battery
10 injures the sexual organs of, a person less than 12 years of age
11 commits a capital felony, punishable as provided in ss. 775.082
12 and 921.1425. In all capital cases under this section,
13 notwithstanding s. 794.0235, the procedure set forth in s.

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14 921.1425 shall be followed in order to determine a sentence of
15 administration of medroxyprogesterone acetate or life
16 imprisonment. If the prosecutor intends to seek the
17 administration of medroxyprogesterone acetate, the prosecutor
18 must give notice to the defendant and file the notice with the
19 court within 45 days after arraignment. The notice must contain
20 a list of the aggravating factors the state intends to prove and
21 has reason to believe it can prove beyond a reasonable doubt.
22 The court may allow the prosecutor to amend the notice upon a
23 showing of good cause ~~921.141.~~

24 Section 2. Section 921.1425, Florida Statutes, is created
25 to read:

26 921.1425 Sentence for capital sexual battery; further
27 proceedings to determine sentence.-

28 (1) INTENT.-

29 (a) The Legislature finds that a person who commits a
30 sexual battery upon, or in an attempt to commit sexual battery
31 injures the sexual organs of, a person less than 12 years of age
32 carries a great risk of death and danger to vulnerable members
33 of this state. Such crimes destroy the innocence of a young
34 child and violate all standards of decency held by civilized
35 society.

36 (b) It is the intent of the Legislature that,
37 notwithstanding s. 794.0235, the procedure set forth in this
38 section shall be followed, and a prosecutor must file notice, as

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39 provided in s. 794.011(2)(a), if he or she intends to seek the
40 administration of medroxyprogesterone acetate.

41 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
42 conviction or adjudication of guilt of a defendant of a capital
43 felony under s. 794.011, the court shall conduct a separate
44 sentencing proceeding to determine whether the defendant should
45 be sentenced to administration of medroxyprogesterone acetate or
46 life imprisonment as authorized by s. 775.082. The proceeding
47 shall be conducted by the trial judge before the trial jury as
48 soon as practicable. If, through impossibility or inability, the
49 trial jury is unable to reconvene for a hearing on the issue of
50 penalty, having determined the guilt of the accused, the trial
51 judge may summon a special juror or jurors as provided in
52 chapter 913 to determine the issue of the imposition of the
53 penalty. If the trial jury has been waived, or if the defendant
54 pleaded guilty, the sentencing proceeding shall be conducted
55 before a jury impaneled for that purpose, unless waived by the
56 defendant. In the proceeding, evidence may be presented as to
57 any matter that the court deems relevant to the nature of the
58 crime and the character of the defendant and shall include
59 matters relating to any of the aggravating factors enumerated in
60 subsection (7) and for which notice has been provided pursuant
61 to s. 794.011(2)(a) or mitigating circumstances enumerated in
62 subsection (8). Any such evidence that the court deems to have
63 probative value may be received, regardless of its admissibility

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64 under the exclusionary rules of evidence, provided the defendant
65 is accorded a fair opportunity to rebut any hearsay statements.
66 However, this subsection shall not be construed to authorize the
67 introduction of any evidence secured in violation of the United
68 States Constitution or the Florida Constitution. The state and
69 the defendant or the defendant's counsel shall be permitted to
70 present argument for or against a sentence of administration of
71 medroxyprogesterone acetate.

72 (3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This
73 subsection applies only if the defendant has not waived his or
74 her right to a sentencing proceeding by a jury.

75 (a) After hearing all of the evidence presented regarding
76 aggravating factors and mitigating circumstances, the jury shall
77 deliberate and determine if the state has proven, beyond a
78 reasonable doubt, the existence of at least two aggravating
79 factors set forth in subsection (7).

80 (b) The jury shall return findings identifying each
81 aggravating factor found to exist. A finding that at least two
82 aggravating factors exist must be unanimous. If the jury:

83 1. Does not unanimously find at least two aggravating
84 factors, the defendant is ineligible for a sentence of
85 administration of medroxyprogesterone acetate.

86 2. Unanimously finds at least two aggravating factors, the
87 defendant is eligible for a sentence of administration of
88 medroxyprogesterone acetate and the jury shall make a

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89 recommendation to the court as to whether the defendant shall be
90 sentenced to life imprisonment without the possibility of parole
91 or to administration of medroxyprogesterone acetate. The
92 recommendation shall be based on a weighing of all of the
93 following:

94 a. Whether sufficient aggravating factors exist.

95 b. Whether aggravating factors exist which outweigh the
96 mitigating circumstances found to exist.

97 c. Based on the considerations in sub-subparagraphs a. and
98 b., whether the defendant should be sentenced to life
99 imprisonment without the possibility of parole or to
100 administration of medroxyprogesterone acetate.

101 (c) If at least eight jurors determine that the defendant
102 should be sentenced to administration of medroxyprogesterone
103 acetate, the jury's recommendation to the court shall be a
104 sentence of administration of medroxyprogesterone acetate. If
105 fewer than eight jurors determine that the defendant should be
106 sentenced to administration of medroxyprogesterone acetate, the
107 jury's recommendation to the court shall be a sentence of life
108 imprisonment without the possibility of parole.

109 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR
110 ADMINISTRATION OF MEDROXYPROGESTERONE ACETATE.-

111 (a) If the jury has recommended a sentence of:

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112 1. Life imprisonment without the possibility of parole,
113 the court shall impose the recommended sentence of life
114 imprisonment without the possibility of parole.

115 2. Administration of medroxyprogesterone acetate, the
116 court, after considering each aggravating factor found by the
117 jury and all mitigating circumstances, may impose a sentence of
118 life imprisonment without the possibility of parole or a
119 sentence of administration of medroxyprogesterone acetate. The
120 court may consider only an aggravating factor that was
121 unanimously found to exist by the jury. The court may impose a
122 sentence of administration of medroxyprogesterone acetate only
123 if the jury unanimously found at least two aggravating factors
124 beyond a reasonable doubt.

125 (b) If the defendant waived his or her right to a
126 sentencing proceeding by a jury, the court, after considering
127 all aggravating factors and mitigating circumstances, may impose
128 a sentence of life imprisonment without the possibility of
129 parole or a sentence of administration of medroxyprogesterone
130 acetate. The court may impose a sentence of administration of
131 medroxyprogesterone acetate only if the court finds that at
132 least two aggravating factors have been proven to exist beyond a
133 reasonable doubt.

134 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
135 IMPRISONMENT OR ADMINISTRATION OF MEDROXYPROGESTERONE ACETATE.-
136 In each case in which the court imposes a sentence of life

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137 imprisonment without the possibility of parole or administration
138 of medroxyprogesterone acetate, the court shall, considering the
139 records of the trial and the sentencing proceedings, enter a
140 written order addressing the aggravating factors set forth in
141 subsection (7) found to exist, the mitigating circumstances in
142 subsection (8) reasonably established by the evidence, whether
143 there are sufficient aggravating factors to warrant the
144 administration of medroxyprogesterone acetate, and whether the
145 aggravating factors outweigh the mitigating circumstances
146 reasonably established by the evidence. The court shall include
147 in its written order the reasons for not accepting the jury's
148 recommended sentence, if applicable. If the court does not issue
149 its order requiring the administration of medroxyprogesterone
150 acetate sentence within 30 days after the rendition of the
151 judgment and sentence, the court shall impose a sentence of life
152 imprisonment without the possibility of parole in accordance
153 with s. 775.082.

154 (6) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of
155 conviction and sentence of administration of medroxyprogesterone
156 acetate shall be subject to automatic review by the Supreme
157 Court and disposition rendered within 2 years after the filing
158 of a notice of appeal. Such review by the Supreme Court shall
159 have priority over all other cases and shall be heard in
160 accordance with rules adopted by the Supreme Court.

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161 (7) AGGRAVATING FACTORS.—Aggravating factors shall be
162 limited to the following:

163 (a) The capital felony was committed by a person
164 previously convicted of a felony violation of s. 794.011, and
165 under sentence of imprisonment or placed on community control or
166 on felony probation.

167 (b) The defendant was previously convicted of another
168 capital felony or of a felony involving the use or threat of
169 violence to the person.

170 (c) The capital felony was committed by a person
171 designated as a sexual predator pursuant to s. 775.21 or a
172 person previously designated as a sexual predator who had the
173 sexual predator designation removed.

174 (d) The capital felony was committed by a sexual offender
175 who is required to register pursuant to s. 943.0435 or a person
176 previously required to register as a sexual offender who had
177 such requirement removed.

178 (e) The defendant knowingly created a great risk of death
179 to one or more persons such that participation in the offense
180 constituted reckless indifference or disregard for human life.

181 (f) The defendant used a firearm or knowingly directed,
182 advised, authorized, or assisted another to use a firearm to
183 threaten, intimidate, assault, or injure a person in committing
184 the offense or in furtherance of the offense.

185 (g) The capital felony was committed for pecuniary gain.

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186 (h) The capital felony was especially heinous, atrocious,
187 or cruel.

188 (i) The victim of the capital felony was particularly
189 vulnerable due to age or disability, or because the defendant
190 stood in a position of familial or custodial authority over the
191 victim.

192 (j) The capital felony was committed by a person subject
193 to an injunction issued pursuant to s. 741.30 or s. 784.046, or
194 a foreign protection order accorded full faith and credit
195 pursuant to s. 741.315, and was committed against the petitioner
196 who obtained the injunction or protection order or any spouse,
197 child, sibling, or parent of the petitioner.

198 (k) The victim of the capital felony sustained serious
199 bodily injury.

200 (8) MITIGATING CIRCUMSTANCES.-Mitigating circumstances
201 shall be the following:

202 (a) The defendant has no significant history of prior
203 criminal activity.

204 (b) The capital felony was committed while the defendant
205 was under the influence of extreme mental or emotional
206 disturbance.

207 (c) The defendant was an accomplice in the capital felony
208 committed by another person and his or her participation was
209 relatively minor.

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210 (d) The defendant acted under extreme duress or under the
211 substantial domination of another person.

212 (e) The capacity of the defendant to appreciate the
213 criminality of his or her conduct or to conform his or her
214 conduct to the requirements of law was substantially impaired.

215 (f) The age of the defendant at the time of the crime.

216 (g) The existence of any other factors in the defendant's
217 background that would mitigate against imposition of the
218 penalty.

219 (9) VICTIM IMPACT EVIDENCE.—Once the prosecution has
220 provided evidence of the existence of two or more aggravating
221 factors as described in subsection (7), the prosecution may
222 introduce, and subsequently argue, victim impact evidence to the
223 jury. Such evidence shall be designed to demonstrate the
224 victim's uniqueness as an individual human being and the
225 physical and psychological harm to the victim. Characterizations
226 and opinions about the crime, the defendant, and the appropriate
227 sentence shall not be permitted as a part of victim impact
228 evidence.

229 (10) APPLICABILITY.—This section applies to any capital
230 felony under s. 794.011, that is committed on or after October
231 1, 2023.

232 Section 3. This act shall take effect October 1, 2023.

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to capital sexual battery; amending s. 794.011, F.S.; providing for administration of medroxyprogesterone acetate sentences for certain child sexual offenders; creating s. 921.1425, F.S.; providing legislative intent concerning capital punishment for certain child sexual offenders; providing for separate administration of medroxyprogesterone acetate proceedings in such cases; providing for findings and recommended sentences by a jury; providing for imposition of sentence of life imprisonment or administration of medroxyprogesterone acetate; providing requirements for a court order in support of administration of medroxyprogesterone acetate sentence; providing for automatic review of sentences of administration of medroxyprogesterone acetate; specifying aggravating factors and mitigating circumstances; providing for victim impact evidence; providing for resentencing if provisions are found to be unconstitutional; providing applicability; providing an effective date.

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