

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.)

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

BILL: SB 716

INTRODUCER: Senator Martin

SUBJECT: Sexual Offenses by Registered Sexual Offenders or Sexual Predators

DATE: March 10, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 716 creates s. 794.0116, F.S., to provide that certain sexual offenses will carry mandatory minimum sentences if committed by a registered sexual offender or sexual predator. The bill also sets forth that offenders sentenced under this section are not eligible for gain-time or any other early release options before serving their minimum sentence.

Sexual offenders and sexual predators who are required to register under ss. 943.0435 or 775.21, F.S., and subsequently commit a violation of any of the following shall be sentenced to a mandatory minimum term of imprisonment of 10 years:

- Luring or enticing a child,¹
- Lewd and Lascivious battery or molestation upon or in the presence of persons less than 16 years of age,²
- Lewd and Lascivious battery or molestation upon an elderly or disabled person,³
- Sexual performance by a child (victims older than 12 years of age),⁴
- Selling or buying of minors,⁵
- Sexual battery.⁶

Sexual offenders and sexual predators who are required to register and are subsequently convicted of a new crime of sexual performance by a child (victims 12 years of age or younger) shall be sentenced to a minimum mandatory term of imprisonment of 20 years.⁷

¹ Section 787.025(2)(c), F.S.

² Section 800.04(4) or (5), F.S.

³ Section 825.1025(2) or (3), F.S.

⁴ Section 827.071, F.S.

⁵ Section 847.0145, F.S.

⁶ Section 794.011, excluding 794.011(10), F.S.

⁷ Section 827.071, F.S.

The bill specifies that if the mandatory minimum term of imprisonment imposed exceeds or is less than the maximum sentence authorized under ss. 775.082, 775.084, or ch. 921, F.S., the mandatory minimum term of imprisonment must be imposed.

The bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections. *See Section V. Fiscal Impact Statement.*

The bill takes effect on October 1, 2025.

II. Present Situation:

Sexual Predators and Offenders

The Florida Department of Law Enforcement (FDLE) is the state agency responsible for Florida's sex offender registry. The information contained in the sex offender registry is reported directly to FDLE by the Florida Department of Corrections (DOC), the Florida Department of Highway Safety and Motor Vehicles, and law enforcement officials.⁸ Florida's sexual offender and sexual predator registration laws were implemented in 1993 and 1997.⁹ The sex offender registry database is a statewide system that collects and disseminates sex offender information to the public and law enforcement agencies through the Sexual Offender Predator System (SOPS). The designation of a person as a sexual offender is not a sentence or a punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes.¹⁰

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.¹¹ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes¹² and are implemented through the combined efforts of the FDLE, all Florida sheriffs, the DOC, the Department of Juvenile Justice, the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families.

⁸ Florida Department of Law Enforcement, *Sexual Offender and Predator System*, available at <https://offender.fdle.state.fl.us/offender/sops/search.jsf>, (last visited on February 20, 2025).

⁹ Sections 775.21 and 943.0435, F.S.

¹⁰ *State v. McKenzie*, 331 So.3d 666 (Fla. 2021).

¹¹ Sections 775.21 and 943.0435, F.S.

¹² Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

A person is designated as a sexual predator by a court if the person:¹³

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;¹⁴
- Has been convicted of a qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.¹⁵

A person is classified as a sexual offender if the person:¹⁶

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.¹⁷

Sex Offender Recidivism

Sex crimes have historically been difficult to measure due to the nature of the crimes, underreporting and timeframes surrounding the crimes. These factors contribute to the complex nature of measuring offenses and rates of recidivism. Sexual recidivism rates vary widely, ranging from 5% after three years to 24% after 15 years.¹⁸

The Department of Corrections defines recidivism as a return to prison, as the result of either a new conviction or a violation of post-prison supervision, within three years of their prison release date. 2024 Recidivism Report reflects the following for inmates incarcerated with the primary offense of a sexual/lewd behavior:

- 11.4% of inmates reoffend within 12 months of release,
- 8.5% of inmates reoffend within 24 months of release,
- 6.3% of inmates reoffend within 36 months of release.¹⁹

¹³ Section 775.21, F.S.

¹⁴ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

¹⁵ Sections 775.21(4) and (5), F.S., The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

¹⁶ Section 943.0435, F.S.

¹⁷ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S.; Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

¹⁸ U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, *Chapter 5: Adult Sex Offender Recidivism*, available at <https://smart.ojp.gov/somapi/chapter-5-adult-sex-offender-recidivism> (last visited February 19, 2025).

¹⁹ Florida Department of Corrections, *Florida Prison Recidivism Report: Releases from 2009 to 2021*, available at <https://fdc-media.ccplatform.net/content/download/25944/file/FDC%20Recidivism%20Report%202019%20Cohort%20July%202024.pdf> (last visited February 19, 2025).

Jessica Lunsford Act

The Jessica Lunsford Act²⁰ was enacted in Florida in 2005 following the tragic abduction, rape, and murder of nine-year-old Jessica Lunsford by a repeat sex offender. Individuals convicted of lewd or lascivious molestation of a child under 12 years old face a mandatory minimum sentence of 25 years in prison,²¹ with the exception of a life felony committed on or after September 1, 2005 which is punishable by life imprisonment or at least 25 years in prison followed by probation or community control for the offenders natural life.²²

Sex Offenses and Crimes Against Children

Luring or Enticing a Child

Section 787.025(2)(c), F.S., provides that it is a third degree felony to commit the offense of luring or enticing a child, after having been previously convicted of a specified offense. A person 18 years of age or older commits such offense if he or she:

- Was previously been convicted of a sexual battery offense under ch. 794, F.S., or a lewd or lascivious offense under s. 800.04, F.S., or s.847.0135(5), F.S., or a violation of a similar law of another jurisdiction; and
- Intentionally lures or entices, or attempt to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose.

The Florida Supreme Court has interpreted “for other than a lawful purpose” as “for an ‘illegal’ purpose, i.e., with intent to violate Florida law by committing a crime.”²³

Lewd and Lascivious Battery on an Elderly or Disabled Person

A person commits a lewd and lascivious battery upon an elderly person or disabled person, when he or she encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.²⁴

Sexual activity, as it relates to lewd and lascivious battery on an elderly or disabled person, means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.²⁵

Lewd or Lascivious Molestation on Persons Under the Age of 16

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces

²⁰ Chapter 2005-28, L.O.F.

²¹ Section 800.04(5)(b), F.S.

²² Section 775.082(3)(a)(4), F.S.

²³ *State v. Brake*, 796 So. 2d at 529, (Fla. 2001). While the Court in Brake upheld the constitutionality of the statute on a vagueness challenge to the “other than a lawful purpose” language, the court struck down a provision of the law that provides that luring a child “without the consent of the child’s parent or legal guardian shall be prima facie evidence of other than a lawful purpose.”

²⁴ Section 825.1025(2), F.S. A lewd or lascivious battery on an elderly person or disabled person is a second degree felony.

²⁵ Section 825.1025(1), F.S. Sexual activity does not include an act done for a bona fide medical purpose.

or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.²⁶

The terms “lewd” and “lascivious” are not defined in statute, but are commonly understood by the courts. The Supreme Court of Florida has found that these terms are in common use, and the plain meaning of the words gives notice as to what conduct is prohibited. The court further stated that the words lewd and lascivious “are synonyms and connote wicked, lustful, unchaste, licentious, or sensual design on the part of the perpetrator.”²⁷

An offender 18 years of age or older who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a life felony.²⁸
- Twelve years of age or older but less than 16 years of age, commits a second degree felony.²⁹
- Twelve years of age or older but less than 16 years of age and the person was previously convicted of specified offenses,³⁰ commits a first degree felony.³¹

An offender less than 18 years of age who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a second degree felony.³²
- Twelve years of age or older but less than 16 years of age, commits a third degree felony.³³

²⁶ Section 800.04(5)(a), F.S.

²⁷ *Chesebrough v. State*, 255 So. 2d 675, 677 (Fla. 1971).

²⁸ Section 800.04(5)(b), F.S. A life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years. Section 775.082, F.S.

²⁹ Section 800.04(5)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

³⁰ Section 800.04(5)(e)1.-7., F.S., provides the following specified offenses: Kidnapping under s. 787.01(2) F.S., or False Imprisonment under s. 787.02(2), F.S., when the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed against the minor a sexual battery under ch. 794, F.S., or a lewd act under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; Kidnapping under s. 787.01(3)(a)2. or 3., F.S., and in the course of committing the kidnapping committed a sexual battery under ch. 794, F.S., or a lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct or lewd or lascivious exhibition under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; False Imprisonment under s. 787.02(3)(a)2. or 3., F.S., and in the course of committing the false imprisonment committed a sexual battery under ch. 794, F.S., or a lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct or lewd or lascivious exhibition under s. 800.04, F.S., or a computer pornography transmission under s. 847.0135(5), F.S.; Sexual Battery under ch. 794, F.S., excluding s. 794.011(10), F.S.; Lewd or Lascivious offenses committed against or in the presence of an elderly or disabled person under s. 825.1025, F.S.; Computer Pornography Transmission under s. 847.0135(5), F.S.; or Lewd or Lascivious offenses under s. 800.04, F.S.

³¹ Section 800.04(5)(e), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a terms of years not exceeding life imprisonment. Section 775.082, F.S.

³² Section 800.04(5)(c)1., F.S.

³³ Section 800.04(5)(d), F.S. A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

Sexual Performance by a Child

Section 827.071, F.S., provides that it is a second degree felony to employ, authorize, or induce a child younger than 18 years of age to engage in a sexual performance,³⁴ or for a parent, legal guardian, or custodian of such child to consent to the participation by such child in a sexual performance.³⁵ It is also a second degree felony for any person to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age.³⁶

A person may not possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.³⁷

Additionally, it is a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.³⁸

Selling or Buying of Minors

Section 847.0145, F.S. provides that selling or buying of minors is when any parent, legal guardian, or other person having custody or control of a minor sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, either with knowledge that the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct. Intending to promote the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.³⁹ Whoever sells, transfers or obtains custody or control of a minor commits the first degree felony.⁴⁰

Sexual Battery

Chapter 794, of the Florida Statutes contains numerous sections of law relating to sexual battery. Section 794.011, F.S., defines the crime of “sexual battery” to mean oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.⁴¹

³⁴ Section 827.071(1)(i), F.S., defines “sexual performance” to mean any performance or part therefor which includes sexual conduct by a child less than 18 years of age. Additionally, s. 827.071(1)(c), F.S., defines “performance” to mean any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

³⁵ Section 827.071(2), F.S.

³⁶ Section 827.071(3), F.S.

³⁷ Section 827.071(4), F.S.

³⁸ Section 827.071(5), F.S.

³⁹ Section 847.0145, F.S.

⁴⁰ Section 847.0145(1) and (2), F.S.

⁴¹ Section 794.011(1)(j), F.S.

Sexual battery is a capital felony⁴² or life felony⁴³ when:

- A person 18 years of age or older commits a sexual battery on, or in an attempt to commit a sexual battery injures the sexual organs of, a person less than 12 years of age.⁴⁴
- A person less than 18 years of age commits sexual battery on, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age.⁴⁵
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury.⁴⁶
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is less than 12 years of age, or in an attempt to commit sexual battery injures the sexual organs of the person.⁴⁷

Sexual battery is a first degree felony, punishable by a term of years not exceeding life,⁴⁸ 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 specified circumstances.^{49,50}
- A person commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances, and that person was previously convicted of specified crimes.⁵¹

⁴² A capital felony is generally punishable by death or life imprisonment. Section 775.082, F.S. The courts have held that the death penalty may not be imposed for sex offenses. In Florida, the only crime for which the death penalty may be imposed is murder in the first degree. *See Rowe v. State*, 417 So. 2d 981, 982 (Fla. 1982). *See also Buford v. State*, 403 So. 2d 943, 951 (Fla. 1981)(holding that the Eighth Amendment prohibits death penalty for rape or sexual battery, even of a child).

⁴³ A life felony is generally punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a fine not exceeding \$15,000. Sections 775.082 and 775.083, F.S.

⁴⁴ Section 794.011(2)(a), F.S.

⁴⁵ Section 794.011(2)(b), F.S.

⁴⁶ Section 794.011(3), F.S.

⁴⁷ Section 794.011(8)(c), F.S.

⁴⁸ A first degree felony may be punishable by a term of years not exceeding life imprisonment when specifically provided by statute and a fine not exceeding \$10,000. Sections 775.082 and 775.083 F.S.

⁴⁹ Section 794.011(4)(a), F.S.

⁵⁰ Section 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on 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 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 the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated, the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, 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 government.

⁵¹ Section 794.011(4)(d), F.S. 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

- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is 12 years of age or older but younger than 18 years of age.⁵²

Sexual battery is a first degree felony, punishable by a term of imprisonment not exceeding 30 years,⁵³ 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 specified circumstances.^{54, 55}
- 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 specified circumstances.^{56, 57}
- 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 in the process does not use physical force and violence likely to cause serious personal injury.⁵⁸
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of specified crimes.⁵⁹

Sexual battery is a second degree felony⁶⁰ 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, and in the process does not use physical force and violence likely to cause serious personal injury.⁶¹
- 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 in the process does not use physical force and violence likely to cause serious personal injury.⁶²

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.

⁵² Section 794.011(8)(b), F.S.

⁵³ The maximum term of imprisonment for a first degree felony is generally 30 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083 F.S.

⁵⁴ See note 50.

⁵⁵ Section 794.011(4)(b), F.S.

⁵⁶ See note 50.

⁵⁷ Section 794.011(4)(c), F.S.

⁵⁸ Section 794.011(5)(a), F.S.

⁵⁹ Section 794.011(5)(d), F.S. 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.

⁶⁰ 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.

⁶¹ Section 794.011(5)(b), F.S.

⁶² Section 794.011(5)(c), F.S.

Sexual battery is a third degree felony⁶³ when:

- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age solicits that person to engage in any act which constitutes sexual battery.⁶⁴

Criminal Punishment Code

The Criminal Punishment Code⁶⁵ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).⁶⁶ The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- 60 days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- 15 years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.⁶⁷

Offense Severity Ranking Chart

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any non-state prison

⁶³ The maximum term of imprisonment for a third degree felony is 5 years imprisonment and a fine not exceeding \$5,000. Sections 775.082 and 775.083 F.S.

⁶⁴ Section 794.011(8)(a), F.S.

⁶⁵ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

⁶⁶ Offenses are either ranked in the offense severity level ranking chart in section 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in section 921.0023, F.S.

⁶⁷ Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense. section 775.083, F.S., provides the following maximum fines; \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁶⁸ Absent mitigation,⁶⁹ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁷⁰

Mandatory Minimum Sentencing

Mandatory minimum sentencing in Florida began in the 1980's and is designed to ensure consistent and severe penalties for specific crimes. Sentencing offenders to mandatory minimum terms of imprisonment prevents the use of early release mechanisms and ensures that offenders serve most or all of their court-imposed sentences.⁷¹ These laws require judges to impose a predetermined minimum sentence for certain offenses, regardless of the circumstances surrounding the crime or the individual's background. Generally, mandatory minimum sentences often apply to specific crimes like drug offenses, firearm violations, and repeat offenses.

Gain-Time

Section 944.275, F.S., allows the Department of Corrections (DOC) to grant deductions from sentences in the form of gain-time to encourage satisfactory inmate behavior, to provide incentive for inmates to participate in productive activities, and to reward inmates who perform outstanding deeds or services. There are currently three types of gain-time inmates may earn: basic, incentive, and meritorious.⁷²

Inmates serving sentences for specified convictions committed on or after October 1, 2014, are ineligible to earn incentive gain-time, including inmates serving sentences for attempt to commit, solicitation to commit, or conspiracy to commit one of these underlying offenses. Gain-time earned by an inmate may also be forfeited for violations of state law or department rules.⁷³

Incentive Gain-Time

The DOC may grant incentive gain-time for each month during which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.⁷⁴ The rate of incentive gain-time in effect on the date the inmate committed the offense that resulted in his or her incarceration is the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and cannot be altered by a subsequent change in

⁶⁸ Section 921.0024, F.S., Unless otherwise noted, information on the Code is from this source.

⁶⁹ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁷⁰ If the scored lowest permissible sentence exceeds the maximum penalty in Section 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

⁷¹ U.S. Department of Justice, Office of Justice Programs, *Mandatory Minimum Sentencing in Florida: Past Trends and Future Implications*, available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/mandatory-minimum-sentencing-florida-past-trends-and-future> (last visited on February 20, 2025).

⁷² Section 944.275, F.S.

⁷³ Section 944.275, F.S.

⁷⁴ Section 944.274(1), F.S.

the severity level of the offense for which the inmate was sentenced.⁷⁵ For sentences imposed for:

- Offenses committed prior to January 1, 1994, up to 20 days per month of incentive gain-time may be granted;
- Offenses committed on or after January 1, 1994, and before October 1, 1995:
 - Up to 25 days per month of incentive gain-time may be granted for offenses ranked in offense severity levels 1 through 7 of the former sentencing guidelines;
 - Up to 20 days per month of incentive gain-time may be granted for offenses ranked in offense severity levels 8, 9, and 10 of the former sentencing guidelines; and
- Offenses committed after October 1, 1995, up to 10 days per month of incentive gain-time may be granted.⁷⁶

The DOC may grant, upon a recommendation of the education program manager, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. An inmate may not receive more than 60 days for educational attainment.⁷⁷ The DOC may grant an additional six days of incentive gain-time if an inmate attends and actively participates in 150 hours of adult basic education to attain basic and functional literacy.⁷⁸

The DOC may not grant incentive gain-time for sentences imposed for the following offenses committed on or after October 1, 2014:

- Homicide occurring in the perpetration of or attempted perpetration of a sexual battery;
- Kidnapping of a child under the age of 13, and in the course of committing the offense, commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- False imprisonment of a child under the age of 13, and in the course of committing the offense commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- Sexual battery;
- Lewd or lascivious offenses upon or in the presence of persons less than 16 years of age;
- Lewd or lascivious offenses upon or in the presence of an elderly person or disabled person;
- or
- Transmission of certain images over a computer to a person who is less than 16 years of age.⁷⁹

The DOC may not grant incentive gain-time for sentences imposed for the following offenses committed on or after October 1, 2014:

⁷⁵ Section 944.275(4)(b), F.S.

⁷⁶ Section 944.275(4)(a)3.(b)1.-3., F.S.

⁷⁷ Section 944.275(4)(d), F.S.

⁷⁸ Section 944.801(3)(i)5., F.S., “Active participation” means at a minimum, that the inmate is attentive, responsive, cooperative, and completes assigned work.

⁷⁹ Section 944.275(4)(e), F.S.

- Murder, when committed by a person engaged in the perpetration of, or in the attempt to perpetrate a sexual battery),⁸⁰
- Kidnapping, upon a child under the age of 13 and who, in the course of committing the offense, commits sexual battery,⁸¹
- False imprisonment of a child under the age 13, and who, in the course of committing the offense, commits sexual battery or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition,⁸²
- Sexual battery,⁸³
- Lewd and Lascivious battery or molestation upon or in the presence of persons less than 16 years of age,⁸⁴
- Lewd and Lascivious battery or molestation upon an elderly or disabled person,⁸⁵
- Computer pornography involving a victim less than 16 years of age.⁸⁶

Sentences imposed for offenses committed on or after July 1, 2023 are ineligible to receive incentive gain-time if the offense is for committing or attempting, soliciting, or conspiring to commit a violation of the above crimes.

Basic Gain-Time

The DOC grants basic gain-time at the rate of 10 days for each month of each sentence imposed on an inmate to encourage satisfactory behavior, subject to the following:

- Portions of any sentences to be served concurrently are treated as a single sentence when determining basic gain-time;
- Basic gain-time for a partial month is prorated on the basis of a 30-day month; and
- When an inmate receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time is granted for the amount of time the maximum sentence expiration date was extended.⁸⁷

A “tentative release date” is calculated utilizing the date projected for the inmate’s release from custody by virtue of gain-time granted or forfeited. The initial tentative release date shall be determined by deducting basic gain-time granted from the maximum sentence expiration date.⁸⁸ Basic gain-time applies to sentences imposed or offenses committed on or after July 1, 1978, and before January 1, 1994.⁸⁹

The DOC may not grant basic gain-time to inmates who are convicted of committing a sexual battery on or after October 1, 1992.⁹⁰

⁸⁰ Section 782.04(1)(a)c., F.S.

⁸¹ Section 787.01(3)(a)2., F.S.

⁸² Section 787.02(3)(a)2. or 3., F.S.

⁸³ Section 794.011(10), F.S.

⁸⁴ Section 800.04(4) or (5), F.S.

⁸⁵ Section 825.1025(2) or (3), F.S.

⁸⁶ Section 847.0135(5), F.S.

⁸⁷ Section 944.275(4)(a), F.S.

⁸⁸ Section 944.275(3)(a), F.S.

⁸⁹ Section 944.275(6), F.S.

⁹⁰ Section 794.011(7), F.S.

Meritorious Gain-Time

The DOC may grant meritorious gain-time to an inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence. The grant of meritorious gain-time may be from one to 60 days.⁹¹ Inmates sentenced as a habitual offender are only eligible for meritorious gain time if the deed occurs after the designation has been removed.⁹²

Limitations on Earning Gain-Time

For sentences imposed for offenses committed on or after October 1, 1995, an inmate may not earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in an inmate's release, prior to serving a minimum of 85 percent of the sentence imposed. Credits awarded by the court for time physically incarcerated are credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., an inmate may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the inmate will have served 85 percent of the sentence imposed.⁹³ If an inmate is found to have violated state law or department rules, gain-time may be forfeited according to law.⁹⁴

Inmates sentenced to life imprisonment must be incarcerated for the rest of their natural lives, unless granted pardon or clemency.⁹⁵ Certain offenders are statutorily prohibited from earning gain-time:

- Prison releasee reoffenders must serve 100 percent of the court-imposed sentence and may not earn gain-time to shorten the length of incarceration.⁹⁶
- Certain inmates convicted of offenses involving the fleeing or attempting to elude a law enforcement officer are ineligible for statutory gain-time.⁹⁷
- Inmates convicted of committing or attempting to commit certain felonies while possessing or using a firearm or destructive device.⁹⁸
- Inmates convicted of committing or attempting to commit certain felonies while possessing or using a semiautomatic firearm and its high-capacity box magazine or a machine gun.⁹⁹

⁹¹ Section 944.275(4)(c), F.S.

⁹² Section 775.084, F.S.

⁹³ Section 944.275(4)(f), F.S.

⁹⁴ Sections 944.275(5) and 944.28, F.S.

⁹⁵ Section 944.275(4)(f), F.S.

⁹⁶ Under s. 775.082(9), F.S., a defendant may be designated a "prison releasee offender" if within three years of being released from incarceration commits or attempts to commit: treason, murder, manslaughter, sexual battery, carjacking, home-invasion robbery, robbery, arson, kidnaping, aggravated assault with a deadly weapon, aggravated battery, aggravated stalking, aircraft piracy, unlawful throwing, placing, or discharging of a destructive devise or bomb, any felony that involves the use or threat of physical force or violence against an individual, armed burglary, burglary of a dwelling, or burglary of an occupied structure, or any felony violation of ss. 790.07, 800.04, 827.03, 827.071, or 847.0135(5), F.S. A "prison releasee offender" also means any defendant who commits or attempts to commit one of the aforementioned offenses while serving a prison sentence or on escape status from a correctional facility.

⁹⁷ Section 316.1935(6), F.S.

⁹⁸ Section 775.087(2)(b), F.S.

⁹⁹ Section 775.087(3)(b), F.S.

- Inmates convicted of battery on a law enforcement officer, firefighter, emergency medical providers, public transit employees or agents, or other specified officers while possessing a firearm or semiautomatic firearm and its high-capacity box magazine.¹⁰⁰
- Inmates convicted under the dangerous sexual felony offender statute.¹⁰¹

Dangerous Sexual Felony Offender

Section 794.0115, F.S., provides that a person is a “dangerous sexual felony offender” if he or she is convicted of specified violation of luring a child,¹⁰² sexual battery,¹⁰³ lewd battery and lewd molestation committed upon or in the presence of persons less than 16 years of age,¹⁰⁴ lewd battery and lewd molestation committed upon or in the presence of an elderly or disabled person,¹⁰⁵ sexual performance by a child,¹⁰⁶ offenses relating to selling or buying of minors,¹⁰⁷ or a similar offense under a former designation, if such offense was committed when the person was 18 years of age or older and the person:

- Caused serious personal injury to the victim as a result of the commission of the offense;
- Used or threatened to use a deadly weapon during the commission of the offense;
- Victimized more than one person during the course of the criminal episode applicable to the offense;
- Committed the offense while under the jurisdiction of a court for a felony offense committed in Florida or another jurisdiction, or for a non-felony offense in another jurisdiction that would have been a felony if it had been committed in Florida; or
- Has previously been convicted of any of the previously described offenses or any offense under a former statutory designation which is similar in elements to any of the previously described offenses.

Dangerous sexual felony offenders must be sentenced to a mandatory minimum term of 25 years imprisonment. They may be sentenced above that threshold up to, and including, life imprisonment.

III. Effect of Proposed Changes:

The bill creates s. 794.0116, F.S., to provide that certain sexual offenses will carry mandatory minimum sentences if committed by a registered sexual offender or sexual predator. The bill also sets forth that offenders sentenced under this section are not eligible for gain-time or any other early release options before serving their minimum sentence.

Sexual offenders and sexual predators who are required to register under ss. 943.0435 or 775.21, F.S., and subsequently commit a violation of any of the following shall be sentenced to a mandatory minimum term of imprisonment of 10 years:

¹⁰⁰ Section 784.07(3), F.S.

¹⁰¹ Section 794.0115(7), F.S.

¹⁰² Section 787.025(2)(c), F.S.

¹⁰³ Sections 794.011(2), (3), (4), (5), or (8), F.S.

¹⁰⁴ Sections 800.04(4) or (5), F.S.

¹⁰⁵ Sections 825.1025(2) or (3), F.S.

¹⁰⁶ Sections 827.071(2), (3), or (4), F.S.

¹⁰⁷ Sections 847.0145, F.S.

- Luring or enticing a child,¹⁰⁸
- Lewd and Lascivious battery or molestation upon or in the presence of persons less than 16 years of age,¹⁰⁹
- Lewd and Lascivious battery or molestation upon an elderly or disabled person,¹¹⁰
- Sexual performance by a child (victims older than 12 years of age),¹¹¹
- Selling or buying of minors,¹¹²
- Sexual battery.¹¹³

Sexual offenders and sexual predators who are required to register and are subsequently convicted of a new crime of sexual performance by a child (victims 12 years of age or younger) shall be sentenced to a minimum mandatory term of imprisonment of 20 years.¹¹⁴

The bill specifies that if the mandatory minimum term of imprisonment imposed exceeds or is less than the maximum sentence authorized under ss. 775.082, 775.084, or ch.921, F.S., the mandatory minimum term of imprisonment must be imposed.

Excluding early releases such as pardon or executive clemency, sexual offenders and sexual predators who are sentenced under this new section of law are not eligible for any of the following sentence reduction mechanisms:

- Gain-time or any form of discretionary early release.¹¹⁵
- Conditional medical release.¹¹⁶

The bill takes effect on October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰⁸ Section 787.025(2)(c), F.S.

¹⁰⁹ Section 800.04(4) or (5), F.S.

¹¹⁰ Section 825.1025(2) or (3), F.S.

¹¹¹ Section 827.071, F.S.

¹¹² Section 847.0145, F.S.

¹¹³ Section 794.011, F.S. excluding 794.011(10), F.S.

¹¹⁴ Section 827.071, F.S.

¹¹⁵ Section 944.275, F.S.

¹¹⁶ Section 947.149, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

- Per the DOC, there are currently 11,914 inmates incarcerated under these statutes, with several of these offenses already having a higher average sentence length than the proposed mandatory minimum sentence. It is not known if these inmates were registered sexual offenders or sexual predators prior to committing the offenses for which they are currently incarcerated. Therefore, the magnitude of the prison bed impact cannot be determined.¹¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

Sexual offender and sexual predator registration under ss. 775.21 and 943.0435, F.S., is a non-punitive, regulatory, civil law. There are numerous ways a person can be relieved of their requirement to register as a sexual offender but maintain their sexual offense conviction. The language provided in the bill may not require certain sexual offenders and sexual predators to receive minimum mandatory sentences if the defendant is relieved of the registration requirement or if the registry fails.

¹¹⁷ Office of Economic and Demographic Research, *SB 716 – Sexual Offenses by Registered Sexual Offenders or Sexual Predators*, (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 794.0116

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.

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