

Committee on Criminal Justice

CS/CS/CS/HB 251 — Sexual Offenses

by Judiciary Committee; Appropriations Committee; Criminal Justice Subcommittee; and Rep. Dorworth and others (CS/CS/SB 488 by Judiciary Committee; Criminal Justice Committee; and Senators Fasano, Benacquisto, and Gaetz)

This bill addresses several issues relating to sexual violence and the legal proceedings relating to such offenses.

The bill amends the Evidence Code to expand the admissibility of collateral crime or “similar fact” evidence in criminal prosecutions of child molestation. It creates admissibility for similar fact evidence in the Evidence Code in the prosecution of sexual offenses. The definition of child molestation is expanded and sexual offense is defined.

The bill provides that the court may set any appropriate conditions on the taking of testimony by children, including the use of a registered service or therapy animal in any proceeding involving a sexual offense.

The bill prohibits a court from granting a request of a defendant in a criminal proceeding for permission to duplicate or copy material depicting sexual performance by a child or child pornography as long as the state attorney makes the material reasonably available to the defendant for inspection.

The bill requires licensed facilities providing emergency room services to gather forensic medical evidence from victims who have reported a sexual battery to a law enforcement agency or upon their request for purposes of filing a report in the future. It requires law enforcement to provide transportation for the victim of an alleged sexual battery to medical treatment, a forensic examination, and a certified rape crisis center, as appropriate. The bill provides that, prior to the investigating officer filing his or her final report, the victim shall be permitted to review it and provide a statement as to the accuracy of the report.

The bill also extends the statute of limitations for video voyeurism beyond the applicable two- and three-year limits to authorize commencement of prosecutions within one year from either the date upon which the victim learns of the existence of the video recording or from the date the recording is confiscated by law enforcement, whichever occurs first.

The bill adds crimes to the list of offenses for which an additional \$151 dollar surcharge will be assessed against a defendant in order to fund the Rape Crisis Program Trust Fund.

Further, the bill requires the court, upon a victim’s request, to order a defendant to undergo HIV and hepatitis testing within 48 hours of the filing of an indictment or information or, if later, within 48 hours after the victim’s request. The court is required to order testing pursuant to the victim’s request under this provision when the defendant is charged with: 1) a specified sexual offense and the victim is a minor, or an elderly person or disabled adult, regardless of whether it involved the transmission of body fluids; or 2) a specified crime that involves the transmission of

body fluids from one person to another. Follow-up testing is also required as determined by a physician.

The bill extends the prohibitions against child pornography to include controlling or intentionally viewing child pornography. The bill specifically adds an “image,” “data,” and “computer depiction” to the enumeration of the items that cannot be possessed, controlled, or viewed. The bill defines “intentionally view” to mean to deliberately, purposefully, and voluntarily view. It specifies that proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time. The bill amends the level-five offenses in the offense severity ranking chart to add the offenses of controlling or intentionally viewing child pornography to that list.

Finally, the bill authorizes the Department of Legal Affairs to fund a nonprofit organization to educate adults and children about sexual abuse and provide other services, with a nonrecurring sum of \$1.5 million in fiscal year 2011-2012 from the General Revenue Fund.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 39-0; House 116-0