

THE FLORIDA SENATE
2023 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

CS/CS/HB 1297 — Capital Sexual Battery

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Baker and others (CS/CS/SB 1342 by Rules Committee; Criminal Justice Committee; and Senators Martin and Book)

The bill (Chapter 2023-25, L.O.F.) amends s. 794.011, F.S., to authorize a sentence of death for capital sexual battery offenses. Capital sexual battery occurs when an adult commits sexual battery upon a child less than twelve years of age, or who in an attempt to commit the sexual battery injures the sexual organs of the child. Sexual battery upon a child less than twelve years of age, or attempted sexual battery which causes injury to the sexual organs of the child, committed by a person who is in a position of familial or custodial authority is also a capital offense.

The bill creates s. 921.1425, F.S., to require a court to conduct a separate sentencing proceeding to determine whether a defendant convicted of a capital sexual battery offense should be sentenced to death or life imprisonment. Specifically, the bill provides that:

- The jury must unanimously find at least two aggravating factors beyond a reasonable doubt for the defendant to be eligible for a sentence of death. The bill creates aggravating factors and mitigating circumstances that are customized to a capital sexual battery crime, for the jury's consideration in arriving at a sentencing recommendation.
- If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole.
- The court has the discretion to enter a death sentence or a sentence of life imprisonment without the possibility of parole if the jury recommends a sentence of death in the capital sexual battery case.
- The prosecutor must present evidence of two or more aggravating factors before victim impact evidence may be introduced and argued by the prosecutor.
- The court must enter a written sentencing order regardless of the sentence imposed by the court. The order must include the reasons for not accepting the jury's recommended sentence, if applicable.
- The State may appeal if the circuit court fails to comply with the new sentencing procedures for capital sexual battery.

The bill provides legislative findings and intent as follows:

- A person who commits a sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age carries a great risk of death and danger to vulnerable members of this state.
- Such crimes destroy the innocence of a young child and violate all standards of decency held by civilized society.
- *Buford v. State of Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, *Kennedy v. Louisiana*, 554 U.S. 407 (2008), was wrongly decided, and such cases are an egregious infringement of the states' power to punish the most heinous of crimes.

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- It is the intent of the Legislature that the procedure set forth in s. 794.011, F.S., shall be followed, and a prosecutor must file a notice, as provided in s. 794.011(2)(a), F.S., if he or she intends to seek the death penalty.

Additionally, the bill amends s. 794.011, F.S., to provide that in capital sexual battery cases, the procedures set forth in s. 921.1425, F.S., must be followed. If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file notice with the court and provide a list of the aggravating factors the state intends to prove.

These provisions were approved by the Governor and take effect October 1, 2023.

Vote: Senate 34-5; House 95-14