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****AS PASSED BY THE LEGISLATURE****

CHAPTER #: 2002-159, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
FINAL ANALYSIS**

BILL #: CS/HB 163, 2ND ENG.

RELATING TO: Sexual Offenses

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative Paul

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
- (2) COUNCIL FOR HEALTHY COMMUNITIES YEAS 16 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Currently, section 825.1025(2) prohibits the offense of lewd or lascivious battery on an elderly person or disabled adult. The offense is a second degree felony and is ranked in level 7 of the offense severity ranking chart of the Criminal Punishment Code. The committee substitute ranks the offense in level 8 of the offense severity ranking chart. This will increase the lowest permissible sentence for the offense to correspond to the offense of sexual battery. The bill also amends section 825.1025 to apply the offense to sexual abuse of a disabled "person" rather than a disabled "adult".

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Lewd or Lascivious Offenses Against Elderly Persons or Disabled Adults

Section 825.1025 prohibits various sexual offenses committed against "an elderly person or disabled adult". In relevant part, the section prohibits "lewd or lascivious battery upon a elderly person or disabled adult" and provides that it occurs when a person encourages, forces, or entices a disabled adult to engage in any act involving sexual activity when the person knows or reasonably should know that the disabled adult either lacks the capacity to consent or fails to give consent.

The term "disabled adult" is defined as:

A person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one of more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

s. 825.1025(2)(a), F.S.

The term "elderly person" is defined as:

A person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

The chapter defines the term "lacks capacity to consent" as meaning:

An impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property.

Sexual Battery

Section 794.011 creates the offense of sexual battery. The term “sexual battery” is defined as “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object”. s. 794.011(1)(h), F.S. The severity of the offense depends on the age of the victim, the age of the offender and the circumstances of the offense.

Criminal Punishment Code

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record and other aggravating factors. Offenses are ranked in the offense severity ranking chart from level one to level ten and are assigned points based on the severity of the offense as determined by the legislature. s. 921.0022, F.S. The points assigned for the offense committed, the offender’s prior record and for other factors are added in order to determine the “lowest permissible sentence” for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. s. 775.082, F.S.

The offense of lewd or lascivious battery or an elderly person or disabled adult is a second degree felony which is ranked in level 7 of the offense severity ranking chart. The lowest permissible sentence for this offense would be 51 months in prison. The offense of sexual battery on a person age 12 or older where the offender does not use force¹ is also a second degree felony which is ranked in level 8 of the offense severity ranking chart. The lowest permissible sentence for this offense is 64.5 months in prison.²

C. EFFECT OF PROPOSED CHANGES:

The offense of “lewd or lascivious battery of an elderly person or disabled adult” is currently a second degree felony and is ranked in level 7 of the offense severity ranking chart of the Criminal Punishment Code. The committee substitute ranks the offense in level 8 of the offense severity ranking chart. As a result, the lowest permissible sentence for the offense will increase from 51 months to 64.5 months. The maximum punishment for the offense will remain 15 years in prison. This ranking will correspond to the ranking for the offense of sexual battery.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹ s. 794.011(5), F.S.

² Included in these calculations is victim injury points for “sexual contact” . s. 921.0024, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference did not consider the prison bed impact of this bill as it passed the legislature. Committee staff does not expect that it will have a significant impact on the Department of Corrections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee Amendments:

HB 163 originally amended the sexual battery statute to provide that “there shall be no defense to a charge of sexual battery based upon consent when the accused is 16 years of age or older and the accused knew or had reason to know that the victim was mentally disabled when the victim’s effective mentality was less than 18 years of age at the time of the offense.” The bill also placed this language within the lewd or lascivious offenses statute. The Committee on Crime Prevention, Corrections & Safety adopted a strike-everything amendment which removed the language of the original bill and increased the ranking of s. 825.1025(2) within the offense severity ranking chart. The bill as amended was made a committee substitute.

The Council for Healthy Communities adopted one amendment to the committee substitute which traveled to the floor. The amendment added a subsection to the sexual battery statute to provide that “when mental defect or mental incapacity of the victim is in issue, an expert witness who is licensed pursuant to chapter 490 or chapter 458 may be utilized.”

Floor Amendments

On Second Reading, Representatives Seiler and Farkas offered a substitute amendment to the amendment adopted by the Council for Healthy Communities. The substitute amendment added language authorizing expert witnesses licensed pursuant to chapter 459. The substitute amendment also provided that no person shall be required to be licensed to practice under chapter 458, 459, or 490 in order to examine, evaluate, interview or diagnose a person for the purpose of preparing to testify as an expert witness in a civil or criminal case, provided that the person is licensed in another state.

On Third Reading, the bill sponsor offered a strike everything amendment which removed the language that had been contained in the first engrossed version of the bill relating to the use and licensing of expert witnesses. The amendment also amended section 825.1025 to prohibit sexual abuse of a disabled person instead of a disabled adult.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

Trina Kramer

AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

David De La Paz

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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