

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 77 w/CS Repeat Sexual Offenders

**SPONSOR(S):** Green

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub.)	6 Y, 0 N	Kramer	De La Paz
2) Public Safety & Crime Prevention	17 Y, 0 N w/CS	Kramer	De La Paz
3) Public Safety Appropriations	7 Y, 0 N	DeBeaugrine	DeBeaugrine
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

HB 77, with committee substitute, amends current law which requires the imposition of a 10 year minimum mandatory sentence for certain repeat sexual battery offenses. The committee substitute, which creates the "Dangerous Sexual Felony Offender Act", expands the list of offenses for which a judge must impose a minimum mandatory sentence, increases the minimum mandatory sentence to 25 years in prison and authorizes the imposition of up to a life sentence.

Under the committee substitute, a judge would be required to impose the minimum mandatory sentence upon an offender who was sentenced under this provision for a violation of one an enumerated list of sexual offenses and who:

- 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;
- Was 28 years of age or older and the victim was under the age of 16;
- Committed such offense while under the jurisdiction of the court for a felony offense or;
- Has previously been convicted of a violation of one of the enumerated offenses.

The fiscal impact of this committee substitute is indeterminate with minimal expected impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0077d.ap.doc

**DATE:** April 16, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

#### B. EFFECT OF PROPOSED CHANGES:

##### Repeat Sexual Batterer

Section 794.0115 requires a judge to sentence a defendant to a mandatory 10 years in prison as a “repeat sexual batterer” if, in a separate proceeding, the judge finds the following:

1. The defendant is being sentenced for one of a list of enumerated sexual battery offenses<sup>1</sup> which was committed:
  - a. While the defendant was serving a prison sentence or any other sentence for a sexual battery conviction or
  - b. Within 10 years after the defendant was convicted of sexual battery or within 10 years after the defendant was released from prison or supervision for a sexual battery conviction.
2. The defendant has previously been convicted of one of the enumerated sexual battery offenses.
3. The defendant has not received a pardon or had the prior conviction set aside in a postconviction proceeding.

This section specifies a procedure that is to be used in cases where an offender is facing sentencing as a repeat sexual batterer. The section provides that if the state attorney pursues a repeat sexual batterer sanction and the judge, in a separate proceeding, determines that the defendant meets the above criteria, the judge must sentence the defendant as a repeat sexual batterer to a ten year minimum mandatory sentence.

Changes made by committee substitute: The committee substitute changes the designation given to an offender sentenced under section 794.0115 from “repeat sexual batterer” to “dangerous sexual felony offender.” The committee substitute expands the list of enumerated offenses for which the enhanced sentencing provisions apply to include sexual battery (contained in current law)

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<sup>1</sup> Included in this list are violations of s.794.011(2)(b), (3), (4) and (5). This list includes every sexual battery offense contained in s. 794.011 except sexual battery committed by an offender over the age of 18 against a victim less than 12 years of age [s.794.015] which already requires the imposition of a life sentence. The list does not include violations of section 800.04, relating to lewd or lascivious offenses.

as well as the offenses of: lewd or lascivious battery<sup>2</sup>, lewd or lascivious molestation<sup>3</sup>, sexual performance by a child<sup>4</sup>, selling or buying a minor<sup>5</sup>, lewd or lascivious offenses committed upon an elderly person or disabled adult<sup>6</sup> and luring or enticing a child<sup>7</sup>.

Under this provision, any person who is sentenced under this provision for a violation of one of the enumerated sexual offenses and who:

- 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;
- Was 28 years of age or older and the victim was under the age of 16<sup>8</sup>;
- Committed such offense while under the jurisdiction of the court for a felony offense or;
- Has previously been convicted of a violation of one of the above offenses;

must be sentenced as a “dangerous sexual felony offender” to a mandatory minimum term of 25 years imprisonment up to and including life imprisonment. The enhanced sentencing provision could be applied to offenders upon the commission of a first offense if the facts of the case met one of the first five criteria listed above.

The committee substitute would have the effect of substantially increasing, in comparison to current law, the sentence that a judge would be required to impose in certain circumstances. For example, if an offender over the age of 28 is charged with having sexual intercourse with a 15 year old victim, under current law<sup>9</sup>, this offense would be punishable by a sentence of between 34.5 months in prison up to a maximum sentence of fifteen years in prison. If sentenced under the provisions of this amendment, the judge would be required to impose a sentence of at least 25 years in prison.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 794.0115, F.S., relating to repeat sexual offenders.

Section 2: Provides effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

<sup>2</sup> s. 800.04(4), F.S. This section requires proof that the offender had engaged in sexual activity with a person 12 years of age or older but less than 16 years of age. “Sexual activity” means the 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. Consent is not a defense to this offense.

<sup>3</sup> s. 800.04(5), F.S. This section requires proof that a person intentionally touched 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 forced or enticed the victim to so touch the offender.

<sup>4</sup> s. 827.071(2), (3), (4), F.S. This section makes it unlawful for a person to employ a child less than 18 years of age to engage in sexual performance.

<sup>5</sup> s. 847.0145, F.S. This section requires proof that the a person sold or purchased a minor with knowledge that as a consequence of the transfer, the minor will be portrayed in a visual depiction engaging in sexually explicit conduct.

<sup>6</sup> s. 825.1025. This section prohibits various lewd or lascivious offenses committed against a person over the age of 60 or against a disabled adult.

<sup>7</sup> s. 787.025, F.S. This section makes it a third degree felony to lure or entice a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose.

<sup>8</sup> The minimum mandatory sentence would not be applicable to the offense of lewd or lascivious molestation where the offender was over the age of 28 and the victim was under the age of 16 unless one of the other criteria, listed above, was present.

<sup>9</sup> This offense would be considered a lewd or lascivious battery, punishable as a second degree felony under the provisions of section 800.04(4). The maximum sentence for a second degree felony is fifteen years in prison.

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on March 14, 2003 to consider the prison bed impact of this bill on the Department of Corrections. As discussed above, this bill may have the effect of substantially increasing the length of sentences imposed on offenders convicted of certain repeat sexual offenses. The CJIC, however, reported the impact is indeterminate with minimal expected impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

*Original bill:* HB 77, as originally filed, changed the title of section 794.0115 from "repeat sexual batterer" to "repeat sexual offender" and broadens the criteria for this classification. The bill expanded the list of enumerated offenses for which the enhanced sentencing provisions apply to include sexual battery (contained in current law) as well as the offenses of lewd or lascivious battery, lewd or lascivious molestation, sexual performance by a child, and selling or buying a minor and increased the minimum mandatory sentence from 10 years to 25 years in prison.

*Strike-all amendment:* The Subcommittee on Criminal Justice voted to recommend a strike all amendment which substantially altered the provisions of bill. The amendment created the “Dangerous Sexual Felony Offender Act”, discussed in the “Effect of Proposed Changes” section of this analysis.

On April 15, 2003, the Subcommittee on Public Safety Appropriations recommended the adoption of an amendment (by Rep. Green) to the committee substitute which removed the provision requiring the imposition of the minimum mandatory sentence based solely on the fact that the offender was 28 years of age or older and the victim was under the age of 16. The amendment also removed the offenses of lewd or lascivious exhibition and lewd or lascivious molestation of an elderly adult from the list of offenses contained within the committee substitute. As a result, these provisions will be consistent with the provisions relating to lewd or lascivious offenses committed on a child.