

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 77 Repeat Sexual Offenders
SPONSOR(S): Green
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|----------|---------|----------------|
| 1) Criminal Justice (Sub.) | 6 Y, 0 N | Kramer | De La Paz |
| 2) Public Safety & Crime Prevention | | | |
| 3) Public Safety Appropriations (Sub.) | | | |
| 4) Appropriations | | | |
| 5) | | | |

SUMMARY ANALYSIS

HB 77 amends current law which requires the imposition of a ten year minimum mandatory sentence for certain repeat sexual battery offenses. The bill expands the list of offenses for which a judge must impose a minimum mandatory sentence upon a second conviction. The bill also increase the minimum mandatory sentence from 10 years in prison to 25 years in prison and authorizes the imposition of up to a life sentence.

Note: The Subcommittee on Criminal Justice recommended a strike everything amendment which substantially alters the provision of the bill. See the amendment section of this bill analysis for details.

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 offenses¹ 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 contained in HB 77

HB 77 changes the title of section 794.0115 from “repeat sexual batterer” to “repeat sexual offender” and broadens the criteria for this classification. The bill expands the list of enumerated offenses for which the enhanced sentencing provisions apply to include sexual battery (contained in current law) as

¹ 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.

well as the offenses of lewd or lascivious battery², lewd or lascivious molestation³, sexual performance by a child⁴, and selling or buying a minor⁵. Under the bill, if a judge is sentencing an offender, who was over the age of 18 at the time of the offense, for one of the enumerated offenses and finds that the offender has previously been convicted of an enumerated offense, the judge must impose a minimum mandatory term of 25 years imprisonment up to a mandatory term of life in prison.⁶ Unlike current law which applies the enhanced sentencing provision only to offenses which are committed within 10 years of an earlier offense, the bill requires the enhanced sentencing provision to be applied regardless of when the earlier offense was committed.

This bill will have the effect of substantially increasing the sentence that must be imposed on defendants who are sentenced under this provision for certain repeat offenses. For example, under current law, if an offender is sentenced under the Criminal Punishment Code for the offense of lewd or lascivious battery and had a prior conviction for the same offense, the offense would be punishable by a term of imprisonment between 36.75 months and 15 years. If sentenced under the provisions of this bill, the judge would be required to impose a sentence of at least 25 years in prison and could impose a sentence of up to life 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:

1. Revenues:

2. Expenditures:

The Criminal Justice Impact Conference has not met 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

² 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.

³ 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.

⁴ s. 827.071, 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.

⁵ 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.

⁶ The offense for which the defendant is being sentenced must have been committed after the date of the commission of the prior sexual offense.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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:

Under the provisions of this bill, a person who has twice been convicted of a specified list of offenses must be sentenced to at least 25 years in prison. Included in this list is section 827.071. Paragraph (5) of section 827.071 makes it a third degree felony for an person to knowingly possess a photograph or motion picture which he or she knows to include any sexual conduct by a child. As a result of this bill, a judge would be required to sentence an offender who was being sentenced for possessing child pornography and who had previously been convicted of this offense to at least 25 years in prison. This offense is currently punishable by up to five years in prison, the maximum sentence for a third degree felony.

The bill includes convictions for a violation of "s.794.011(2)-(8)". However, subsections (6) and (7) of section 794.011 do not contain criminal offenses. Reference to these two subsections should be removed from the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill sponsor offered a strike all amendment which will substantially altered the provisions of bill. The Subcommittee on Criminal Justice voted to recommend the amendment. The amendment removes the current provisions of section 794.0115 and creates the "Dangerous Sexual Felony Offender Act". Under this provision, any person who is convicted of a violation of a list of enumerated sexual offenses⁷ and who:

⁷ Included in this list are violations of sections 794.011(2),(3),(4), (5) or (8); 800.04(4) or (5); s.827.071 and s. 847.0145 referenced in footnotes 2-5. Excluded from the list of offenses contained in the bill are violations of s. 827.071(5), relating to possession of child pornography. Further, 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 (but

- 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 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.

This amendment 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 law⁸, 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.

would still apply if one of the other criteria listed above was present). Also included are violations of sections 825.1025, relating to lewd or lascivious offenses committed upon an elderly person or disabled adult and s. 87.025 relating to luring or enticing a child.

⁸ 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.