

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Criminal and Civil Justice

BILL: CS/SB 716

INTRODUCER: Criminal Justice Committee and Senator Martin

SUBJECT: Sexual Offenses by Persons Previously Convicted of Sexual Offenses

DATE: April 14, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 716 creates s. 794.0116, F.S., to provide that certain sexual offenses will carry mandatory minimum sentences if committed by a registered sexual offender or sexual predator. The bill also sets forth that a defendant sentenced under this section is not eligible for gain-time or any other form of discretionary early release, other than pardon or executive clemency, before serving the minimum sentence.

A person who was previously convicted of, or had adjudication withheld for, a crime listed in ss. 943.0435 or 775.21, F.S., and commits a violation of any of the following shall be sentenced to a mandatory minimum term of imprisonment of 10 years:

- Luring or enticing a child under s. 787.025(2)(c), F.S.;
- Lewd or lascivious battery or molestation under s. 800.04(4) or (5), F.S.;
- Lewd or lascivious battery or molestation upon an elderly or disabled person under s. 825.1025(2) or (3), F.S.;
- Sexual performance by a child or child pornography (victims older than 12 years of age) under s. 827.071, F.S.;
- Selling or buying of minors under s. 847.0145, F.S.; or,
- Sexual battery under s. 794.011, excluding 794.011(10), F.S.

Sexual offenders and sexual predators who were previously convicted of, or had adjudication withheld for, a crime listed in ss. 943.0435 or 775.21, F.S., and subsequently are convicted of a new crime of sexual performance by a child or child pornography (victims 12 years of age or

younger) under s. 827.071, F.S., shall be sentenced to a minimum mandatory term of imprisonment of 20 years.

The bill specifies that if the mandatory minimum term of imprisonment imposed exceeds the maximum sentence authorized under ss. 775.082, 775.084, or ch. 921, F.S., the mandatory minimum term of imprisonment must be imposed. If the mandatory minimum term of imprisonment is less than the sentence that could be imposed under ss. 775.082, 775.084, or ch. 921, F.S., the sentence imposed must include the minimum term of imprisonment under the bill.

The bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) for the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2025.

II. Present Situation:

Sexual Predators and Offenders

The Florida Department of Law Enforcement (FDLE) is the state agency responsible for Florida's sex offender registry. The information contained in the sex offender registry is reported directly to FDLE by the Florida Department of Corrections (DOC), the Florida Department of Highway Safety and Motor Vehicles (DHSMV), and law enforcement officials. Florida's sexual offender and sexual predator registration laws were implemented in 1993 and 1997.¹ The sex offender registry database is a statewide system that collects and disseminates sex offender information to the public and law enforcement agencies through the Sexual Offender Predator System (SOPS). The designation of a person as a sexual offender is not a sentence or a punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes.²

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.³ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes⁴ and are implemented through the combined efforts of law enforcement, the DOC, the Department of Juvenile Justice, the DSHMV, and the Department of Children and Families.

A person is designated as a sexual predator by a court if the person:⁵

¹ Sections 775.21 and 943.0435, F.S.

² *State v. McKenzie*, 331 So.3d 666 (Fla. 2021).

³ Sections 775.21 and 943.0435, F.S.

⁴ Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

⁵ Section 775.21, F.S.

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;⁶
- Has been convicted of a qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.⁷

A person is classified as a sexual offender if the person:⁸

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.

Sex Offender Recidivism

Sex crimes have historically been difficult to measure due to the nature of the crimes, underreporting and timeframes surrounding the crimes. These factors contribute to the complex nature of measuring offenses and rates of recidivism. Sexual recidivism rates vary widely, ranging from 5% after three years to 24% after 15 years.⁹

The Department of Corrections defines recidivism as a return to prison, as the result of either a new conviction or a violation of post-prison supervision, within three years of their prison release date. Inmates incarcerated with the primary offense of a sexual/lewd behavior reactivated at a rate of:

- 11.4% within 12 months of release,
- 8.5% within 24 months of release,
- 6.3% within 36 months of release.¹⁰

Jessica Lunsford Act

The Jessica Lunsford Act was enacted in Florida in 2005 following the tragic abduction, rape, and murder of nine-year-old Jessica Lunsford by a repeat sex offender. Individuals convicted of lewd or lascivious molestation of a child under 12 years old face a mandatory minimum sentence of 25

⁶ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

⁷ Sections 775.21(4) and (5), F.S., The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

⁸ Section 943.0435, F.S.

⁹ U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, *Chapter 5: Adult Sex Offender Recidivism*, available at <https://smart.ojp.gov/somapi/chapter-5-adult-sex-offender-recidivism> (last visited April 10, 2025).

¹⁰ Florida Department of Corrections, *Florida Prison Recidivism Report: Releases from 2009 to 2021*, available at <https://fdc-media.ccplatform.net/content/download/25944/file/FDC%20Recidivism%20Report%202019%20Cohort%20July%202024.pdf> (last visited April 10, 2025).

years in prison,¹¹ with the exception of a life felony committed on or after September 1, 2005 which is punishable by life imprisonment or at least 25 years in prison followed by probation or community control for the offenders natural life.¹²

Dangerous Sexual Felony Offender

The Dangerous Sexual Felony Offender Act provides that a person is a “dangerous sexual felony offender” if he or she is convicted of violations specified in s. 794.0115, F.S.. Dangerous sexual felony offenders must be sentenced to a mandatory minimum term of 25 years of imprisonment. They may be sentenced above that threshold up to, and including, life imprisonment.

Sex Offenses and Crimes Against Children

Luring or Enticing a Child

Section 787.025(2)(c), F.S., provides that it is a third degree felony to commit the offense of luring or enticing a child, after having been previously convicted of a specified offense. A person 18 years of age or older commits such offense if he or she:

- Was previously been convicted of a sexual battery offense under ch. 794, F.S., or a lewd or lascivious offense under s. 800.04, F.S., or s.847.0135(5), F.S., or a violation of a similar law of another jurisdiction; and
- Intentionally lures or entices, or attempt to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose.

The Florida Supreme Court has interpreted “for other than a lawful purpose” as “for an ‘illegal’ purpose, i.e., with intent to violate Florida law by committing a crime.”¹³

Lewd and Lascivious Battery on an Elderly or Disabled Person

A person commits a lewd and lascivious battery upon an elderly person or disabled person, when he or she encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.¹⁴

Sexual activity, as it relates to lewd and lascivious battery on an elderly or disabled person, means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.¹⁵

Lewd or Lascivious Molestation on Persons Under the Age of 16

A person who intentionally touches 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 forces

¹¹ Section 800.04(5)(b), F.S.

¹² Section 775.082(3)(a)(4), F.S.

¹³ *State v. Brake*, 796 So. 2d at 529, (Fla. 2001). While the Court in *Brake* upheld the constitutionality of the statute on a vagueness challenge to the “other than a lawful purpose” language, the court struck down a provision of the law that provides that luring a child “without the consent of the child’s parent or legal guardian shall be prima facie evidence of other than a lawful purpose.”

¹⁴ Section 825.1025(2), F.S. A lewd or lascivious battery on an elderly person or disabled person is a second degree felony.

¹⁵ Section 825.1025(1), F.S. Sexual activity does not include an act done for a bona fide medical purpose.

or entices a person under 16 years of age to touch the perpetrator, commits lewd or lascivious molestation.¹⁶

An offender 18 years of age or older who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a life felony.
- Twelve years of age or older but less than 16 years of age, commits a second degree felony.
- Twelve years of age or older but less than 16 years of age and the person was previously convicted of specified offenses under s. 800.04(5)(c)2., F.S., commits a first degree felony.¹⁷

An offender less than 18 years of age who commits lewd or lascivious molestation against a victim:

- Less than 12 years of age, commits a second degree felony.
- Twelve years of age or older but less than 16 years of age, commits a third degree felony.

Sexual Performance by a Child

Section 827.071, F.S., provides that it is a second degree felony to employ, authorize, or induce a child younger than 18 years of age to engage in a sexual performance or for a parent, legal guardian, or custodian of such child to consent to the participation by such child in a sexual performance. It is also a second degree felony for any person to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age. A person may not possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.

Additionally, it is a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.¹⁸

Selling or Buying of Minors

Section 847.0145, F.S. provides that selling or buying of minors is when any parent, legal guardian, or other person having custody or control of a minor sells or otherwise transfers custody or control of such minor or offers to sell or otherwise transfer custody of such minor, either:

- With knowledge that the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit; or,
- With intent to promote either engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Whoever sells, transfers or obtains custody or control of a minor commits a first degree felony.

¹⁶ Section 800.04(5)(a), F.S.

¹⁷ Section 800.04(5), F.S.

¹⁸ Section 827.071(5), F.S.

Sexual Battery

Chapter 794, F.S., contains numerous sections of law relating to sexual battery. Section 794.011, F.S., defines the crime of “sexual battery” to mean 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; however, sexual battery does not include an act done for a bona fide medical purpose. A sexual battery may be classified as high as a capital felony depending on factors such as the age of the offender, age of the victim, and injuries.

Criminal Punishment Code

The Criminal Punishment Code (Code) is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- 60 days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- 15 years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.¹⁹

Offense Severity Ranking Chart

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any non-state prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. Absent mitigation, the

¹⁹ Section 775.082, F.S.

permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.²⁰

If the scored lowest permissible sentence exceeds the maximum penalty in Section 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.²¹

Mandatory Minimum Sentencing

Mandatory minimum sentencing in Florida began in the 1980's and is designed to ensure consistent and severe penalties for specific crimes. Sentencing offenders to mandatory minimum terms of imprisonment prevents the use of early release mechanisms and ensures that offenders serve most or all of their court-imposed sentences.²² These laws require judges to impose a predetermined minimum sentence for certain offenses, regardless of the circumstances surrounding the crime or the individual's background. Generally, mandatory minimum sentences often apply to specific crimes like drug offenses, firearm violations, and repeat offenses.

Gain-Time

Section 944.275, F.S., allows the Department of Corrections (DOC) to grant deductions from sentences in the form of gain-time to encourage satisfactory inmate behavior, to provide an incentive for inmates to participate in productive activities, and to reward inmates who perform outstanding deeds or services.

For sentences imposed for offenses committed on or after October 1, 1995, an inmate may not earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in an inmate's release, prior to serving a minimum of 85 percent of the sentence imposed. Credits awarded by the court for time physically incarcerated are credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., an inmate may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the inmate will have served 85 percent of the sentence imposed. If an inmate is found to have violated state law or department rules, gain-time may be forfeited according to law.²³

Inmates sentenced to life imprisonment must be incarcerated for the rest of their natural lives, unless granted pardon or clemency.²⁴ Certain offenders are statutorily prohibited from earning gain-time.

²⁰ Section 921.0024, F.S.

²¹ *Id.*

²² U.S. Department of Justice, Office of Justice Programs, *Mandatory Minimum Sentencing in Florida: Past Trends and Future Implications*, available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/mandatory-minimum-sentencing-florida-past-trends-and-future> (last visited on April 10, 2025).

²³ Sections 944.275(5) and 944.28, F.S.

²⁴ Section 944.275(4)(f), F.S.

III. Effect of Proposed Changes:

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- Sexual performance by a child or child pornography (victims older than 12 years of age) under s. 827.071, F.S.;
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The bill specifies that if the mandatory minimum term of imprisonment imposed exceeds the maximum sentence authorized under ss. 775.082 or 775.084, or ch. 921, F.S., the mandatory minimum term of imprisonment must be imposed. If the mandatory minimum term of imprisonment is less than the sentence that could be imposed under ss. 775.082 or 775.084, or ch. 921, F.S., the sentence imposed must include the minimum term of imprisonment under the bill.

The bill takes effect on October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

- Per the DOC, there are currently 11,914 inmates incarcerated under these statutes, with several of these offenses already having a higher average sentence length than the proposed mandatory minimum sentence. Therefore, the magnitude of the prison bed impact cannot be determined.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 794.0116

²⁵ Office of Economic and Demographic Research, *SB 716 – Sexual Offenses by Registered Sexual Offenders or Sexual Predators*, (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 11, 2025:

The amendment provides that a person who is convicted of certain sex offenses, rather than a person who must register as a sex offender, must serve a mandatory minimum for a conviction of specified offenses.

- B. **Amendments:**

None.