

HB 123 – Sexual Battery on Mentally Incapacitated Persons (Identical SB 1022)

This bill amends s. 794.011, F.S., splitting the current definition of mentally incapacitated into two separate definitions. The current definition is now called involuntary mentally incapacitated, which is defined as “temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.” The new term is voluntarily mentally incapacitated, which is defined as “temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered with his or her consent or due to any other act committed upon that person with his or her consent.” These two defined concepts are added into the following statement (new language in bold): The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that **voluntarily or involuntarily** mentally **incapacitates** or physically incapacitates the victim.”

This bill also amends s. 787.06(3)(g), F.S., adding the following for acts involving human trafficking (new language in bold): “For commercial sexual activity in which any child younger than 18 years of age or an adult believed by the person to be a child younger than 18 years of age, or in which any person who is mentally defective, **involuntarily** mentally incapacitated, **or voluntarily mentally incapacitated**, as those terms are defined in s. 794.011(1), F.S. is involved commits a life felony.”

Per DOC, in FY 18-19, there were 2 new commitments to prison for human trafficking under the current definition of mentally incapacitated, and no new commitments for sexual battery. In FY 19-20, there was one new commitment for human trafficking, and one new commitment for sexual battery. In FY 20-21, there were 4 new commitments to prison for human trafficking, and no new commitments for sexual battery. In FY 21-22, there were 15 new commitments to prison for human trafficking, and no new commitments for sexual battery. It is not known how the newly defined voluntary mental incapacitation will impact prison admissions.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

Requested by: House