

SB 878 – Sexual Offenses

This bill amends multiple sex crime statutes, replacing “vagina” with “female genitals.” It also defines female genitals under Chapter 794 as “the labia majora, labia minora, clitoris, vulva, hymen, and vagina” in the amended s. 794.011, F.S. Further amending s. 794.011(3), F.S., this bill adds the following (new language in bold): “a person who commits sexual battery upon a person 12 years of age or older, without that person’s consent, and in the process thereof uses or threatens to use a deadly weapon or uses **or threatens to use** actual physical force likely to cause serious personal injury **or death** commits a life felony.”

This bill also amends s. 775.15, F.S., stating the following: “in addition to the time periods prescribed in this section, a prosecution for sexual battery in violation of s. 794.011, F.S., where the victim was unaware of the sexual assault due to the victim being mentally defective, mentally incapacitated, or physically helpless, may be commenced within 1 year after the date on which the victim obtains actual knowledge of the offense or the date on which the offense is reported to law enforcement, whichever occurs first. Any dissemination of a recording of such offense before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection.”

Per DOC, in FY 18-19, there were 1,348 new commitments to prison under the statutes amended in this bill. In FY 19-20, there were 1,145 new commitments, and in FY 20-21, there were 857 new commitments. For s. 794.011(3), F.S. specifically, there were 47 new commitments in FY 18-19, 44 new commitments in FY 19-20, and 26 new commitments in FY 20-21. It is not known how many additional offenders could be charged under these expanded definitions. Furthermore, under s. 794.011, F.S., there were 504 new commitments in FY 18-19, 424 in FY 19-20, and 274 in FY 20-21, though it is not known what number of these involved “mentally defective, mentally incapacitated, or physically helpless” victims, nor is it known how many additional offenders would enter prison due to the new language under s. 775.15, F.S.

CONFERENCE ADOPTED ESTIMATE: **Positive Indeterminate**

Finally, this bill creates s. 800.06, F.S., adding an **unranked, 3rd felony (Level 1 by default)** for someone who “who intentionally touches in a lewd or lascivious manner, and without consent, the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person 16 years of age or older, or forces a person 16 years of age or older to so touch the perpetrator, commits lewd or lascivious molestation of a person 16 years of age or older.”

Per FDLE, in FY 18-19, there were 125 people arrested for the second degree misdemeanors of lewd and lascivious behavior (s. 798.02, F.S.) and unnatural and lascivious act (s. 800.02, F.S.). In FY 19-20, there were 63 people arrested, and in FY 20-21, there were 50 people arrested. It is not known how many of those arrested fit the

definition of the conduct described under s. 800.06, F.S. It is possible that this conduct might currently fall under simple battery, a high volume misdemeanor offense that elevates to a Level 1, 3rd degree felony if a second or subsequent battery occurs after a prior conviction (168,345 arrests over the last three fiscal years). However, it cannot be determined where these offenses are currently captured, nor how many arrests occur for these acts in a given year.

In FY 18-19, the incarceration rate for a Level 1, 3rd degree felony was 9.5%, and in FY 19-20 the incarceration rate was 8.2%. In FY 20-21, the incarceration rate for a Level 1, 3rd degree felony was 8.1%.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

**CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL:
Positive Indeterminate**

Requested by: Senate