

Florida State University College of Law

Scholarship Repository

Staff Analysis

Florida Legislative Documents

1984

Session Law 84-086

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the [Legislation Commons](#)

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 84-086" (1984). *Staff Analysis*. 475.
<https://ir.law.fsu.edu/staff-analysis/475>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Year 1984	Session Law No. 84-80	LOF Cite	#pp
Prime Bill# 56, 58	Sponsor	Comp./Sim. Bills S. 100, H. 134	
JLMC Hist.	Senate	House	#pp
Leg. Cites	pp.#s	pp.#s	
Committee of Ref.	Senate House	Previous versions?	

Committee Records

H/S	Committee	Year	Record Series: Folder Title, etc.	Location Cite	#pp
H	Gen. P.	1984	10. 100 file - 100 - 100 - 100	19/346	
			10. 100 file - 100 - 100 - 100	NO BILL FILES	
S			10. 100 file - 100 - 100 - 100	18/1370	
"		"	10. 100 file - 100 - 100 - 100	"	
"		"	10. 100 file - 100 - 100 - 100	18/1391	
"			SB. 138	"	
"			SB. 404	18/1392	
"			SB. 632	"	

Senate/House Journals

Page	?	Date	#pp	Page	?	Date	#pp
12.							

Tape Recordings

H/S	Floor	Committee/subcommittee	Date	# Tapes	Location	Cite
1						

Other Documentation

Record series title, folder title, etc.	Location Cite	#pp

By Representative Messersmith

1 A bill to be entitled

2 An act relating to sexual battery; amending s.
3 794.011(4), F.S., and creating s. 794.012,
4 F.S., providing that persons who stand in
5 familial, custodial, or official authority to a
6 child over 11 years of age but under age 18 and
7 who solicit the child for sexual activity shall
8 be guilty of a third degree felony, and who
9 engage in sexual activity with the child shall
10 be guilty of a first degree felony; providing
11 an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (4) of section 794.011, Florida
16 Statutes, is amended to read:

17 794.011 Sexual battery.--

18 (4) A person who commits sexual battery upon a person
19 over the age of 11 years, without that person's consent, under
20 any of the following circumstances shall be guilty of a felony
21 of the first degree, punishable as provided in s. 775.082, s.
22 775.083, or s. 775.084:

23 (a) When the victim is physically helpless to resist.

24 (b) When the offender coerces the victim to submit by
25 threatening to use force or violence likely to cause serious
26 personal injury on the victim, and the victim reasonably
27 believes that the offender has the present ability to execute
28 these threats.

29 (c) When the offender coerces the victim to submit by
30 threatening to retaliate against the victim, or any other
31 person, and the victim reasonably believes that the offender

This public document was promulgated at an average cost of 16 cents per single page for the information of members of the Legislature and the public

COPY

reProduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250

Series 7 Carton 13.6

H. C. Saw F. A. 'ed

2-6-8

has the ability to execute these threats in the future.

"Retaliation," as used in this section, includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(d) When 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 which mentally or physically incapacitates the victim.

~~{e}--When the victim is older than 11 but less than 18 years of age and the offender is in a position of familial, custodial, or official authority over the victim and uses this authority to coerce the victim to submit~~

~~{e}{f}~~ When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

Section 2. Section 794.012, Florida Statutes, is created to read:

794.012 Prohibited acts; persons in familial, custodial, or official authority; penalties.--

(1) For purposes of this section, "sexual activity" means 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, or masturbation.

(2) Any person who stands in position of familial, custodial, or official authority to a child over 11 but less than 18 and who:

(a) Solicits that child for sexual activity shall be guilty of a felony of the third degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in sexual activity with that child shall be guilty of a felony of the first degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The willingness or consent of the child shall not be a defense in these circumstances.

Section 3. This act shall take effect October 1, 1984.

HOUSE SUMMARY

Provides that any person who stands in position of familial, custodial, or official authority to a child over 11 years of age but under 18 years of age and who solicits the child for sexual activity shall be guilty of a felony of the third degree and who engages in sexual activity with the child shall be guilty of a felony of the first degree.

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 1392

Florida Senate - 1984
By Senator Frank-
23-605-84

SB 632

This public document wa. . . of \$8.78 per printed page for 1500 copies to inform the Legislature and the public of proposed legislation

1 A bill to be entitled
2 An act relating to time limitations on criminal
3 prosecutions; amending s. 775 15, F S ,
4 extending the statute of limitation for certain
5 sex-related crimes against persons under the
6 age of 18, providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida
9
10 Section 1 Paragraph (f) is added to subsection (2) of
11 section 775 15, Florida Statutes, to read
12 775.15 Time limitations.--
13 (2) Except as otherwise provided in this section,
14 prosecutions for other offenses are subject to the following
15 periods of limitation:
16 (f) If the victim of a violation of s 794 01(4) or
17 (5), s. 794 05, s 800 02, s 800.03, s 800 04, or s 826 04
18 is under the age of 18, the applicable period of limitation
19 does not begin to run until the victim has reached the age of
20 18 or the violation is reported to a law enforcement or other
21 governmental agency, whichever occurs earlier
22 Section 2 This act shall take effect effect October
23 1, 1984.
24
25 *****
26 SENATE SUMMARY
27 Provides that the statute of limitations for certain sex
28 crimes against children does not begin to run until the
29 child reaches age 18 or until the crime is reported,
30 whichever occurs earlier.
31



THE FLORIDA SENATE
COMMITTEE ON JUDICIARY-CRIMINAL

215 Senate Office Building
Tallahassee, Florida 32301
(904) 488-1501

Senator Kenneth C. Jenne, *Chairman*
Senator Richard H. Langley, *Vice-Chairman*

Paul Liepshutz, *Staff Director*

*current
Fubis*

February 6, 1984

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 1392

*SP 632
(1984)*

The Honorable Pat Frank
State Senator, District 23
312 Senate Office Building
Tallahassee, FL 32301

Dear Senator Frank:

Attached is an analysis of those statutes of limitations pertaining to sex crimes against minors. It concludes that those crimes which are most likely to be barred from prosecution by the running of the statute are non-rapes committed against the very young. It further suggests the novel solution of commencing the running of the statute for those crimes when the child reaches a particular age rather than when the crimes are committed. Although not certain, I am unaware of any other jurisdiction which takes that approach. I hope the memo will be helpful to you in deciding how to address the problem.

Should you choose to request a bill, we will be glad to answer any questions Bill Drafting may have.

Sincerely,

Paul

Paul Liepshutz

PL/eh

Attachment

February 3, 1984

M E M O R A N D U M

TO: Senator Pat Frank

FROM: Donna Dugger, Legislative Analyst

RE: Statute of limitations as it relates to sexual crimes
against children.

BACKGROUND:

The purpose of the statute of limitations for a criminal prosecution is to protect people from being indefinitely threatened by possible criminal prosecution, which might otherwise be indefinitely delayed until such a time when defense witnesses become unavailable, judges change office, or other time hazards develop which could impede an otherwise good defense. State v. Hickman, 189 So.2d 254 (Fla. 2nd DCA 1966).

Section 775.15, F.S., controls the time limitations for criminal prosecutions in the following manner: for a capital or life felony, there is no limitation; for a first degree felony, there is a four year limitation; for any other felony, there is a three year limitation; for a first degree misdemeanor, there is a two year limitation; for a second degree misdemeanor, there is a one year limitation. The statute of limitations in a criminal case begins to run from the date the crime is committed.

Since the time limitations are contingent upon the seriousness of the crime, the penalties of the relevant sex crimes must be looked at to determine the appropriate limitation period. For instance, sexual battery is punishable as a capital felony, life felony, first degree felony, or second degree felony depending upon the age of the victim and the way the crime is committed.

A sexual battery victim under the age of 12 years is fully protected because there is no statute of limitations since it is a capital felony offense. A nonconsenting sexual battery victim

who is 12 years old or older who has force or a deadly weapon used against him likely to cause serious injury is also fully protected because this is a life felony.

As the force or method used to commit the offense becomes less violent, the degree of the offense decreases; consequently, the applicable statute of limitations also decreases. For example, a sexual battery victim who is 12 years old or older and who is basically coerced, or who is physically or mentally incapable of validly consenting, is protected up to four years after the crime occurred. Therefore, a 14 year old victim in this category would be able to initiate prosecution until he was 18 years old because this is a first degree felony offense.

A nonconsenting sexual battery victim 12 years old or older who has force used against him not likely to cause serious injury would be protected by a three year time limitation because this is a second degree felony. Therefore, a 12 year old victim falling into this category would be able to initiate prosecution until he was 15 years old because this is a second degree felony.

To summarize, the effect of the statute of limitations on a sexual battery victim is as follows: a victim under 12 years of age is fully protected; a victim 12 years old or older can be protected fully, for four years, or for three years, depending on what category he falls into. The category he falls into depends upon the degree of force or method used to accomplish the offense.

Generally, sex crimes that fall short of the penalties for sexual battery, such as statutory rape, incest, lewd and lascivious acts upon a child, as well as aggravated child abuse and child abuse, have a three year time limitation. If an eight year old child was the victim of a lewd and lascivious assault, he would be able to initiate prosecution until he was 11 years old.

ANALYSIS OF THE PROBLEM

It seems that the children who may be inadequately protected by the existing statute of limitations are the ones under 12 years old who have been victims of other sex crimes besides sexual battery. Victims of sexual battery under 12 years old are fully protected, and victims of sexual battery over 12 years old are protected, at a minimum, until they reach 15 years of age. Victims of other sex crimes over the age of 12 years are also protected, for the most part, for a three year period, which would take them to their fifteenth birthday at a minimum. It seems reasonable to assume that a child of fifteen would be

reasonably able to handle coming forward with the crime committed against him.

On the other hand, victims of these other sex crimes who are under 12 years old are really too young, and many times are unaware that a crime has been committed against them, to come forward within a three year time limitation.

POSSIBLE APPROACHES:

1. The statute of limitations for sex crimes committed against children would start to run at the time the crime was reported, instead of when the crime was committed.

2. Abolish the statute of limitations for sex crimes committed against children.

3. Extend the time limitation for sex crimes against children from the existing three and four years to some other arbitrary number of years.

4. Leave the current statute of limitations the way it is now, except if a child is under 12 years of age, and is a victim of one of the sex crimes proscribed by the following sections: s. 794.05, F.S., carnal intercourse with unmarried person under 18 years; s. 800.02, F.S., unnatural and lascivious act; s. 800.03, F.S., exposure of sexual organs; s. 800.04, F.S., lewd, lascivious or indecent assault or act upon or in presence of child; s. 826.04, F.S., incest; then the existing time periods do not begin to run until the child reaches his twelfth birthday.

RECOMMENDATION:

The first two approaches seem to be too broad and open-ended because they could lead to the very result the statute of limitation is designed to prevent, which is to protect people from being indefinitely threatened by possible criminal prosecution. With the first approach, a seven year old victim of a lewd and lascivious assault might not report it until he was 15 years old, which would mean he would still have until he was 18 years old to initiate proceedings against the offender. With the second approach, the same victim would be able to initiate prosecution any time.

Although the third approach would allow the seven year old victim mentioned above a pre-determined number of additional years to initiate prosecution, the approach would also allow a 14 year old lewd and lascivious assault victim the same number of additional years to initiate prosecution, which seems a little unnecessary since the 14 year old is probably old enough to come

Senator Frank
Page 4
February 3, 1984

forward with his story in the next three years (that is the number presently allowed).

The fourth approach is the one we recommend because it is the most narrow approach which addresses the outlined problem. It protects the young children who are the ones who most need that protection and who aren't being protected now, but does not change the time limits for the older children who seem to be adequately protected now.

We have made some arbitrary assumptions about at what age a child should be old enough to come forward with his story. Based on these assumptions, we have recommended that for certain sex crimes the statute of limitations would start to run when the child reaches his twelfth birthday. However, as a policy decision, if you feel that a 15 year old child is not old enough to tell his story and therefore needs to be further protected under the time limitations, you could increase the age at which the statute of limitations would begin to run from 12 years old to an age you felt allowed enough maturation time for the child to be able to tell his story.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Dugger</u> <i>P.D.</i>	<u>Liepshutz</u> <i>MM</i>	1. <u>JCR</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Time Limitation on Criminal Prosecution

BILL NO. AND SPONSOR: SB 632 by Senator Frank

1. SUMMARY:

A. Present Situation:

The purpose of the statute of limitations for a criminal prosecution is to protect people from being indefinitely threatened by possible criminal prosecution, which might otherwise be indefinitely delayed until such a time when defense witnesses become unavailable, judges change office, or other time hazards develop which could impede an otherwise good defense. State v. Hickman, 189 So.2d 254 (Fla. 2nd DCA 1966).

Section 775.15, F.S., controls the time limitations for criminal prosecutions in the following manner: for a capital or life felony, there is no limitation; for a first degree felony, there is a four year limitation; for any other felony, there is a three year limitation; for a first degree misdemeanor, there is a two year limitation; for a second degree misdemeanor, there is a one year limitation. The statute of limitations in a criminal case begins to run from the date the crime is committed.

Since the time limitations are contingent upon the seriousness of the crime, the penalties of the relevant sex crimes must be looked at to determine the appropriate limitation period. Sexual battery is punishable as a capital felony, life felony, first degree felony, or second degree felony depending upon the age of the victim and the way the crime is committed.

A sexual battery victim under the age of 12 years is fully protected because there is no statute of limitations since it is a capital felony offense. Similarly, a nonconsenting sexual battery victim who is 12 years old or older who has force or a deadly weapon used against him likely to cause serious injury is fully protected because this is a life felony.

As the force or method used to commit the offense becomes less violent, the degree of the offense decreases; consequently, the applicable statute of limitations also decreases. Therefore, the prosecution of a sexual battery involving a victim who is 12 years old or older and who is basically coerced, or who is physically or mentally incapable of validly consenting, must be brought within four years after the crime occurred because this is a first degree felony offense.

The case of a nonconsenting sexual battery victim 12 years old or older who has force used against him not likely to cause serious injury must be brought within a three year time limitation because this is a second degree felony.

Generally, sex crimes that fall short of the penalties for sexual battery, such as statutory rape (a second degree

COPY

reproduced by

FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250

Series 18 Carton 1392

felony), incest (a third degree felony), lewd and lascivious assault upon a child (a second degree felony), have a three year time limitation. Commission of an unnatural and lascivious act with another person is a second degree misdemeanor, which will have a 1 year time limitation whereas exposure of sexual organs in a public place will have a 2 year time limitation since it is a first degree misdemeanor.

B. Effect of Proposed Changes:

The bill would make an exception to the general rule that the statute of limitation begins to run from the date the crime is committed by providing that it would begin to run for certain sex crimes committed against children under 18 years once such crime was reported to officials or once the child became 18 years old, whichever occurred first. Therefore, an 11 year old victim of a lewd and lascivious assault would be able to initiate prosecution up until he was 21 years old unless he reported the crime before he turned 18 years old, rather than only being able to initiate prosecution up until he was 14 years old which is current law.

The sex crimes that would be covered by this exception would be as follows: the first and second degree felony offense of sexual battery, statutory rape (second degree felony), incest (third degree felony), lewd and lascivious assault (second degree felony), commission of an unnatural and lascivious act (second degree misdemeanor), and exposure of sexual organs (first degree misdemeanor).

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, the bill will have a minimal impact on the Department.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> <i>D.D.</i>	<u>Liepshutz</u> <i>mm</i>	1. <u>JCR</u>	<u>FAV</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Time Limitation on Criminal Prosecution

BILL NO. AND SPONSOR: SB 632 by Senator Frank

I. SUMMARY:

A. Present Situation:

The purpose of the statute of limitations for a criminal prosecution is to protect people from being indefinitely threatened by possible criminal prosecution, which might otherwise be indefinitely delayed until such a time when defense witnesses become unavailable, judges change office, or other time hazards develop which could impede an otherwise good defense. State v. Hickman, 189 So.2d 254 (Fla. 2nd DCA 1966).

Section 775.15, F.S., controls the time limitations for criminal prosecutions in the following manner: for a capital or life felony, there is no limitation; for a first degree felony, there is a four year limitation; for any other felony, there is a three year limitation; for a first degree misdemeanor, there is a two year limitation; for a second degree misdemeanor, there is a one year limitation. The statute of limitations in a criminal case begins to run from the date the crime is committed.

Since the time limitations are contingent upon the seriousness of the crime, the penalties of the relevant sex crimes must be looked at to determine the appropriate limitation period. Sexual battery is punishable as a capital felony, life felony, first degree felony, or second degree felony depending upon the age of the victim and the way the crime is committed.

A sexual battery victim under the age of 12 years is fully protected because there is no statute of limitations since it is a capital felony offense. Similarly, a nonconsenting sexual battery victim who is 12 years old or older who has force or a deadly weapon used against him likely to cause serious injury is fully protected because this is a life felony.

As the force or method used to commit the offense becomes less violent, the degree of the offense decreases; consequently, the applicable statute of limitations also decreases. Therefore, the prosecution of a sexual battery involving a victim who is 12 years old or older and who is basically coerced, or who is physically or mentally incapable of validly consenting, must be brought within four years after the crime occurred because this is a first degree felony offense.

The case of a nonconsenting sexual battery victim 12 years old or older who has force used against him not likely to cause serious injury must be brought within a three year time limitation because this is a second degree felony.

Generally, sex crimes that fall short of the penalties for sexual battery, such as statutory rape (a second degree

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 1392

felony), incest (a third degree felony), lewd and lascivious assault upon a child (a second degree felony), have a three year time limitation. Commission of an unnatural and lascivious act with another person is a second degree misdemeanor, which will have a 1 year time limitation whereas exposure of sexual organs in a public place will have a 2 year time limitation since it is a first degree misdemeanor.

B. Effect of Proposed Changes:

The bill would make an exception to the general rule that the statute of limitation begins to run from the date the crime is committed by providing that it would begin to run for certain sex crimes committed against children under 18 years once such crime was reported to officials or once the child became 18 years old, whichever occurred first. Therefore, an 11 year old victim of a lewd and lascivious assault would be able to initiate prosecution up until he was 21 years old unless he reported the crime before he turned 18 years old, rather than only being able to initiate prosecution up until he was 14 years old which is current law.

The sex crimes that would be covered by this exception would be as follows: the first and second degree felony offense of sexual battery, statutory rape (second degree felony), incest (third degree felony), lewd and lascivious assault (second degree felony), commission of an unnatural and lascivious act (second degree misdemeanor), and exposure of sexual organs (first degree misdemeanor).

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, the bill will have a minimal impact on the Department.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

FINAL UPDATE: June 13, 1984

REVISED: April 16, 1984

DATE: April 10, 1984

BILL NO. SB 632

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

NOTE: This analysis reflects the nature of the bill as it left the Committee on Judiciary-Criminal. Any further changes to the bill are not included in this analysis. See the "Comments" section for the final procedural action taken by the Legislature.

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>FAV</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Time Limitation on
Criminal Prosecution

BILL NO. AND SPONSOR:

SB 632 by
Senator Frank

I. SUMMARY:

A. Present Situation:

The purpose of the statute of limitations for a criminal prosecution is to protect people from being indefinitely threatened by possible criminal prosecution, which might otherwise be indefinitely delayed until such a time when defense witnesses become unavailable, judges change office, or other time hazards develop which could impede an otherwise good defense. State v. Hickman, 189 So.2d 254 (Fla. 2nd DCA 1966).

Section 775.15, F.S., controls the time limitations for criminal prosecutions in the following manner: for a capital or life felony, there is no limitation; for a first degree felony, there is a four year limitation; for any other felony, there is a three year limitation; for a first degree misdemeanor, there is a two year limitation; for a second degree misdemeanor, there is a one year limitation. The statute of limitations in a criminal case begins to run from the date the crime is committed.

Since the time limitations are contingent upon the seriousness of the crime, the penalties of the relevant sex crimes must be looked at to determine the appropriate limitation period. Sexual battery is punishable as a capital felony, life felony, first degree felony, or second degree felony depending upon the age of the victim and the way the crime is committed.

A sexual battery victim under the age of 12 years is fully protected because there is no statute of limitations since it is a capital felony offense. Similarly, a nonconsenting sexual battery victim who is 12 years old or older who has force or a deadly weapon used against him likely to cause serious injury is fully protected because this is a life felony.

COPY

reproduced by

FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250

Series 18 Carton 1392

As the force or method used to commit the offense becomes less violent, the degree of the offense decreases; consequently, the applicable statute of limitations also decreases. Therefore, the prosecution of a sexual battery involving a victim who is 12 years old or older and who is basically coerced, or who is physically or mentally incapable of validly consenting, must be brought within four years after the crime occurred because this is a first degree felony offense.

The case of a nonconsenting sexual battery victim 12 years old or older who has force used against him not likely to cause serious injury must be brought within a three year time limitation because this is a second degree felony.

Generally, sex crimes that fall short of the penalties for sexual battery, such as statutory rape (a second degree felony), incest (a third degree felony), lewd and lascivious assault upon a child (a second degree felony), have a three year time limitation. Commission of an unnatural and lascivious act with another person is a second degree misdemeanor, which will have a 1 year time limitation whereas exposure of sexual organs in a public place will have a 2 year time limitation since it is a first degree misdemeanor.

B. Effect of Proposed Changes:

The bill would make an exception to the general rule that the statute of limitation begins to run from the date the crime is committed by providing that it would begin to run for certain sex crimes committed against children under 18 years once such crime was reported to officials or once the child became 18 years old, whichever occurred first. Therefore, an 11 year old victim of a lewd and lascivious assault would be able to initiate prosecution up until he was 21 years old unless he reported the crime before he turned 18 years old, rather than only being able to initiate prosecution up until he was 14 years old which is current law.

The sex crimes that would be covered by this exception would be as follows: the first and second degree felony offense of sexual battery, statutory rape (second degree felony), incest (third degree felony), lewd and lascivious assault (second degree felony), commission of an unnatural and lascivious act (second degree misdemeanor), and exposure of sexual organs (first degree misdemeanor).

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, the bill will have a minimal impact on the Department.

III. COMMENTS:

Final Update: SB 632 died in the Committee on Criminal Justice in the House. Provisions similar to those in SB 632 were included in SB 138 which became law on June 5, 1984. Chapter 84-86, Laws of Florida.

IV. AMENDMENTS: None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> <i>D.D.</i>	<u>Liepshutz</u> <i>MM</i>	1. <u>JCR</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Sexual Battery

BILL NO. AND SPONSOR: SB 138 by Senator Crawford

I. SUMMARY:

A. Present Situation:

The only time when consent is not an issue in a sexual battery case is when the victim is 11 years or younger because the victim is deemed to be too young to consent; therefore, determining at what point the child reaches that age is critical.

In 1980, the Fourth District Court of Appeals held that the phrase "11 years or younger" in the sexual battery statute, s. 794.011, F.S., did not include a child who was 11 years and 9 months old.^{/1} The First District Court of Appeals, on the other hand, held that the phrase "11 years or younger" did include a child who was 11 years and 3 months old.^{/2} The Florida Supreme Court resolved this conflict by holding that the phrase "11 years or younger" does refer to the time up to, but not including, the victim's 12th birthday.^{/3}

B. Effect of Proposed Changes:

SB 138 would conform the phrase "11 years or younger" in the sexual battery statute to the Supreme Court's holding in Hansen by changing that phrase to "less than 12 years of age". Furthermore, the phrase "over the age of 11 years" found elsewhere in the sexual battery statute also concerning the victim's age would be changed to "12 years of age or older".

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

C O P Y

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 139

^{/1} State v. Carroll, 378 So.2d 4 (Fla. 4th DCA 1980), cert. denied, 385 So.2d 761 (Fla. 1980).
^{/2} State v. Hansen, 404 So.2d 199 (Fla. 1st DCA 1981).
^{/3} Hansen v. State, 421 So.2d 504 (Fla. 1982).

FINAL UPDATE: June 13, 1984

REVISED: February 7, 1984

DATE: January 24, 1984

BILL NO. SB 138

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

NOTE: This analysis reflects the nature of the bill as it left the Committee on Judiciary-Criminal. Any further changes to the bill are not included in this analysis. See the "Comments" section for the final procedural action taken by the Legislature.

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> ¹⁰	<u>Liepshutz</u>	1. <u>JCR</u>	<u>FAV</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Sexual Battery

BILL NO. AND SPONSOR:

SB 138 by
Senator Crawford

I. SUMMARY:

A. Present Situation:

The only time when consent is not an issue in a sexual battery case is when the victim is 11 years or younger because the victim is deemed to be too young to consent; therefore, determining at what point the child reaches that age is critical.

In 1980, the Fourth District Court of Appeals held that the phrase "11 years or younger" in the sexual battery statute, s. 794.011, F.S., did not include a child who was 11 years and 9 months old./1 The First District Court of Appeals, on the other hand, held that the phrase "11 years or younger" did include a child who was 11 years and 3 months old./2 The Florida Supreme Court resolved this conflict by holding that the phrase "11 years or younger" does refer to the time up to, but not including, the victim's 12th birthday./3

B. Effect of Proposed Changes:

SB 138 would conform the phrase "11 years or younger" in the sexual battery statute to the Supreme Court's holding in Hansen by changing that phrase to "less than 12 years of age". Furthermore, the phrase "over the age of 11 years" found elsewhere in the sexual battery statute also concerning the victim's age would be changed to "12 years of age or older".

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 1391

FINAL UPDATE: June 13, 1984

REVISED: February 7, 1984

BILL NO. SB 138

DATE: January 24, 1984

Page 2

III. COMMENTS:

Final Update: SB 138, which was the result of a conference committee, became law on June 5, 1984. SB 138 included provisions similar to those in Senate Bills 404, 632, 750, CS/SB 890 and 891, and House Bills 134 and 542. Chapter 84-86, Laws of Florida.

IV. AMENDMENTS:

None.

-
- /1 State v. Carroll, 378 So.2d 4 (Fla. 4th DCA 1980), cert. denied, 385 So.2d 761 (Fla. 1980).
/2 State v. Hansen, 404 So.2d 199 (Fla. 1st DCA 1981).
/3 Hansen v. State, 421 So.2d 504 (Fla. 1982).

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> <i>D.P.</i>	<u>Liepshutz</u> <i>ML</i>	1. <u>JCR</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Sexual Battery

BILL NO. AND SPONSOR:
SB 404 by
Senator Fox

I. SUMMARY:

A. Present Situation:

Currently, there are several existing statutes which prohibit persons from sexually interacting with a minor. The sexual battery statute, section 794.011, Florida Statutes, prescribes several penalties depending on the age of the offender and the victim, whether consent is an element, whether force or a deadly weapon is used, and whether physical injury results or is likely to result. Sexual battery is defined as any type of penetration by, or union with, the sexual organ of another, or the anal or vaginal penetration of another by any other object.

There is a provision in the sexual battery statute which makes it a first degree felony for a person in familial, custodial, or official authority over a victim who is older than 11 but less than 18 years to use this authority to coerce the victim to submit to nonconsensual sexual battery. The incest statute also protects minors from being taken advantage of sexually by penalizing sexual intercourse between family members of sufficient relationship by making it a third degree felony offense. Furthermore, section 880.04, F.S., penalizes the lewd and lascivious handling, fondling or assault upon a child under 14 years old by making it a second degree felony offense.

A question arises as to whether existing law applies to situations where a minor is encouraged by an adult to engage in sexual behavior but no actual sexual contact occurs. The general solicitation statute, Chapter 777, F.S., would not seem to apply if there is an incomplete crime of sexual battery because for the crime of solicitation to occur, the offender must solicit (encourage) another person to commit an offense, and in this situation, the one doing the soliciting is committing the offense, not the minor who is being sexually approached. Unless the offender does some overt act beyond mere urging, the offense of "attempt" will not apply in this situation either. However, the solicitation of another to "give or receive of the body for licentious sexual intercourse without hire" is punishable as a second degree misdemeanor under the prostitution statute.

B. Effect of Proposed Changes:

The provision in the sexual battery statute which prohibits nonconsensual sexual battery by an offender in familial, custodial, or official authority over the victim would be deleted from that statute. Instead, the bill would create another statute proscribing the solicitation and the actual commission of certain "sexual activity" on children over 11 but less than 18 years by a person in familial, custodial, or official authority over the child. The prohibited "sexual

COPY

reproduced by

FLORIDA STATE ARCHIVES

DEPARTMENT OF STATE

R A GRAY BUILDING

Tallahassee, FL 32399-0250

Series 18 Carton 1392

activity" would continue to include the definition of sexual battery, but it would also include masterbation.

The newly created statute would no longer require, as the sexual battery statute does, proof of lack of consent or that the offender used such familial authority to coerce the child. Solicitation of a child for "sexual activity" would be a third degree felony offense, whereas the actual engaging in such activity with the child would be a first degree felony offense.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, there would be a minimal fiscal impact because no significant increase in prison admissions or in the length of commitments is foreseen.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> <i>P.D.</i>	<u>Liepshutz</u> <i>mm</i>	1. <u>JCR</u>	<u>FAV</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Sexual Battery

BILL NO. AND SPONSOR:
SB 404 by
Senator Fox

I. SUMMARY:

A. Present Situation:

Currently, there are several existing statutes which prohibit persons from sexually interacting with a minor. The sexual battery statute, section 794.011, Florida Statutes, prescribes several penalties depending on the age of the offender and the victim, whether consent is an element, whether force or a deadly weapon is used, and whether physical injury results or is likely to result. Sexual battery is defined as any type of penetration by, or union with, the sexual organ of another, or the anal or vaginal penetration of another by any other object.

There is a provision in the sexual battery statute which makes it a first degree felony for a person in familial, custodial, or official authority over a victim who is older than 11 but less than 18 years to use this authority to coerce the victim to submit to nonconsensual sexual battery. The incest statute also protects minors from being taken advantage of sexually by penalizing sexual intercourse between family members of sufficient relationship by making it a third degree felony offense. Furthermore, section 880.04, F.S., penalizes the lewd and lascivious handling, fondling or assault upon a child under 14 years old by making it a second degree felony offense.

A question arises as to whether existing law applies to situations where a minor is encouraged by an adult to engage in sexual behavior but no actual sexual contact occurs. The general solicitation statute, Chapter 777, F.S., would not seem to apply if there is an uncompleted crime of sexual battery because for the crime of solicitation to occur, the offender must solicit (encourage) another person to commit an offense, and in this situation, the one doing the soliciting is committing the offense, not the minor who is being sexually approached. Unless the offender does some overt act beyond mere urging, the offense of "attempt" will not apply in this situation either. However, the solicitation of another to "give or receive of the body for licentious sexual intercourse without hire" is punishable as a second degree misdemeanor under the prostitution statute.

B. Effect of Proposed Changes:

The provision in the sexual battery statute which prohibits nonconsensual sexual battery by an offender in familial, custodial, or official authority over the victim would be deleted from that statute. Instead, the bill would create another statute proscribing the solicitation and the actual commission of certain "sexual activity" on children over 11 but less than 18 years by a person in familial, custodial, or official authority over the child. The prohibited "sexual

COPY

reproduced by

FLORIDA STATE ARCHIVES

DEPARTMENT OF STATE

R. A. GRAY BUILDING

Tallahassee, FL 32399-0250

Series 18 Carton 1392

activity" would continue to include the definition of sexual battery, but it would also include masterbation.

The newly created statute would no longer require, as the sexual battery statute does, proof of lack of consent or that the offender used such familial authority to coerce the child. Solicitation of a child for "sexual activity" would be a third degree felony offense, whereas the actual engaging in such activity with the child would be a first degree felony offense.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, there would be a minimal fiscal impact because no significant increase in prison admissions or in the length of commitments is foreseen.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

FINAL UPDATE: June 13, 1984

REVISED: April 4, 1984

BILL NO. SB 404

DATE: March 19, 1984

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

NOTE: This analysis reflects the nature of the bill as it left the Committee on Judiciary-Criminal. Any further changes to the bill are not included in this analysis. See the "Comments" section for the final procedural action taken by the Legislature.

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> <i>D.D.</i>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>FAV</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Sexual Battery

BILL NO. AND SPONSOR: SB 404 by Senator Fox

I. SUMMARY:

A. Present Situation:

Currently, there are several existing statutes which prohibit persons from sexually interacting with a minor. The sexual battery statute, section 794.011, Florida Statutes, prescribes several penalties depending on the age of the offender and the victim, whether consent is an element, whether force or a deadly weapon is used, and whether physical injury results or is likely to result. Sexual battery is defined as any type of penetration by, or union with, the sexual organ of another, or the anal or vaginal penetration of another by any other object.

There is a provision in the sexual battery statute which makes it a first degree felony for a person in familial, custodial, or official authority over a victim who is older than 11 but less than 18 years to use this authority to coerce the victim to submit to nonconsensual sexual battery. The incest statute also protects minors from being taken advantage of sexually by penalizing sexual intercourse between family members of sufficient relationship by making it a third degree felony offense. Furthermore, section 880.04, F.S., penalizes the lewd and lascivious handling, fondling or assault upon a child under 14 years old by making it a second degree felony offense.

A question arises as to whether existing law applies to situations where a minor is encouraged by an adult to engage in sexual behavior but no actual sexual contact occurs. The general solicitation statute, Chapter 777, F.S., would not seem to apply if there is an uncompleted crime of sexual battery because for the crime of solicitation to occur, the offender must solicit (encourage) another person to commit an offense, and in this situation, the one doing the soliciting is committing the offense, not the minor who is being sexually approached. Unless the offender does some overt act beyond mere urging, the offense of "attempt" will not apply in this

COPY
reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 1392

FINAL UPDATE: June 13, 1984

REVISED: April 4, 1984

BILL NO. SB 404

DATE: March 19, 1984

Page 2

situation either. However, the solicitation of another to "give or receive of the body for licentious sexual intercourse without hire" is punishable as a second degree misdemeanor under the prostitution statute.

B. Effect of Proposed Changes:

The provision in the sexual battery statute which prohibits nonconsensual sexual battery by an offender in familial, custodial, or official authority over the victim would be deleted from that statute. Instead, the bill would create another statute proscribing the solicitation and the actual commission of certain "sexual activity" on children over 11 but less than 18 years by a person in familial, custodial, or official authority over the child. The prohibited "sexual activity" would continue to include the definition of sexual battery, but it would also include masturbation.

The newly created statute would no longer require, as the sexual battery statute does, proof of lack of consent or that the offender used such familial authority to coerce the child. Solicitation of a child for "sexual activity" would be a third degree felony offense, whereas the actual engaging in such activity with the child would be a first degree felony offense.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, there would be a minimal fiscal impact because no significant increase in prison admissions or in the length of commitments is foreseen.

III. COMMENTS:

Final Update: SB 404 died in the Committee on Criminal Justice in the House. Provisions similar to those in SB 404 were included in SB 138 which became law on June 5, 1984. Chapter 84-86, Laws of Florida.

IV. AMENDMENTS:

None.

Bill Analysis



FLORIDA HOUSE OF REPRESENTATIVES

H. Lee Moffitt, Speaker Steve Pajcik, Speaker pro tempore
Committee on Criminal Justice

Elvin L. Martinez
Chairman
Harold W. Spack
Vice Chairman

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250

Series 18 Carton 1391

HB 134 by Rep. Messersmith
relating to
sexual battery

DATE: December 22, 1983

REVISED: _____

OTHER COMMITTEES OF REFERENCE:
None

REVISED: _____

SENATE BILL: _____

I. SUMMARY

A. PRESENT SITUATION:

Chapter 794, Florida Statutes, prohibits varying degrees of involuntary sexual battery. For purposes of this bill, section 794.011(4)(e), Florida Statutes, creates a first degree felony for one to commit a sexual battery, without consent, upon a person who is over 11 years of age and less than 18, and the defendant enjoys "familial, custodial, or official authority" over the minor and uses this "authority" to coerce the victim.

There exist other provisions in the law relating to sexual abuse of minors. Section 794.05, Florida Statutes, outlaws unlawful carnal knowledge with an unmarried person of previous chaste character under 18 years of age. Section 827.04, Florida Statutes, outlaws child abuse with third degree felony and misdemeanor penalties. Section 847.012, Florida Statutes, prohibits the sale or distribution of pornographic materials to minors. Section 796.03, Florida Statutes, establishes a second degree felony for procuring a minor (under 16) for prostitution.

B. EFFECT OF PROPOSED CHANGES:

The bill would strike subsection (4)(e) from section 794.011 and create a new section 794.012, readopting current law relating to the first degree felony as it presently exists and also creating a new third degree felony: soliciting a minor (between 11-17 years) for "sexual activity". Under the new felony, any person enjoying "authority" over a youth who solicits

Page 2

the child for "sexual activity" could be convicted and sentenced for up to 5 years imprisonment.

II. FISCAL IMPACT

Minimal impact. There may be a slight increase in future admissions to the Department of Corrections, which would not significantly effect the prison population or appropriation.

III. COMMENTS

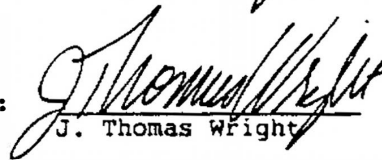
The sponsor of the bill seeks to clarify current law as it relates to institutionalized minors and sexual conduct sought by persons in authority over them.

IV. AMENDMENTS

Prepared by:


J. Thomas Wright

Staff Director:


J. Thomas Wright

Copy to Sponsor: December 22, 1983

Bill Analysis



FLORIDA HOUSE OF REPRESENTATIVES

H. Lee Moffitt, Speaker Steve Fajcik, Speaker pro tempore
Committee on Criminal Justice

Elvin L. Martinez
Chairman
Harold W. Spett
Vice Chairman

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250
Series 147 Carton 1246

HB 134 by Rep. Messersmith
relating to
sexual battery

DATE: December 22, 1983

REVISED: _____

OTHER COMMITTEES OF REFERENCE:
None

REVISED: _____

SENATE BILL: _____

I. SUMMARY

A. PRESENT SITUATION:

Chapter 794, Florida Statutes, prohibits varying degrees of involuntary sexual battery. For purposes of this bill, section 794.011(4)(e), Florida Statutes, creates a first degree felony for one to commit a sexual battery, without consent, upon a person who is over 11 years of age and less than 18, and the defendant enjoys "familial, custodial, or official authority" over the minor and uses this "authority" to coerce the victim.

There exist other provisions in the law relating to sexual abuse of minors. Section 794.05, Florida Statutes, outlaws unlawful carnal knowledge with an unmarried person of previous chaste character under 18 years of age. Section 827.04, Florida Statutes, outlaws child abuse with third degree felony and misdemeanor penalties. Section 847.012, Florida Statutes, prohibits the sale or distribution of pornographic materials to minors. Section 796.03, Florida Statutes, establishes a second degree felony for procuring a minor (under 16) for prostitution.

B. EFFECT OF PROPOSED CHANGES:

The bill would strike subsection (4)(e) from section 794.011 and create a new section 794.012, readopting current law relating to the first degree felony as it presently exists and also creating a new third degree felony: soliciting a minor (between 11-17 years) for "sexual activity". Under the new felony, any person enjoying "authority" over a youth who solicits

Page 2

the child for "sexual activity" could be convicted and sentenced for up to 5 years imprisonment.

II. FISCAL IMPACT

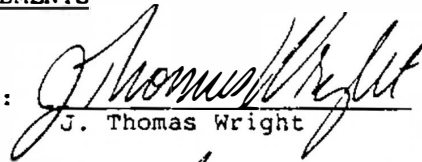
Minimal impact. There may be a slight increase in future admissions to the Department of Corrections, which would not significantly effect the prison population or appropriation.

III. COMMENTS

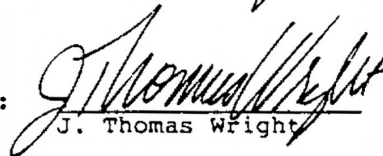
The sponsor of the bill seeks to clarify current law as it relates to institutionalized minors and sexual conduct sought by persons in authority over them.

IV. AMENDMENTS

Prepared by:


J. Thomas Wright

Staff Director:


J. Thomas Wright

Copy to Sponsor: December 22, 1983

DATE: April 23, 1984Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> 10-10	<u>Liepshutz</u>	1. <u>JCR</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Sexual Battery

BILL NO. AND SPONSOR:
HB 134 by
Rep. Messersmith & others

I. SUMMARY:

A. Present Situation:

Currently, there are several existing statutes which prohibit persons from sexually interacting with a minor. The sexual battery statute, section 794.011, Florida Statutes, prescribes several penalties depending on the age of the offender and the victim, whether consent is an element, whether force or a deadly weapon is used, and whether physical injury results or is likely to result. Sexual battery is defined as any type of penetration by, or union with, the sexual organ of another, or the anal or vaginal penetration of another by any other object.

The only time when consent is not an issue in a sexual battery case is when the victim is 11 years or younger because the victim is deemed to be too young to consent; therefore, determining at what point the child reaches that age is critical. In 1980, the Fourth District Court of Appeals held that the phrase "11 years or younger" in the sexual battery statute, s. 794.011, F.S., did not include a child who was 11 years and 9 months old. State v. Carroll, 378 So. 2d 4 (Fla. 4th DCA 1980), cert. denied, 385 So. 2d 761 (Fla. 1980). The First District Court of Appeals, on the other hand, held that the phrase "11 years or younger" did include a child who was 11 years and 3 months old. State v. Hansen, 404 So. 2d 199 (Fla. 1st DCA 1981). The Florida Supreme Court resolved this conflict by holding that the phrase "11 years or younger" does refer to the time up to, but not including, the victim's 12th birthday. Hansen v. State, 421 So. 2d 504 (Fla. 1982).

It is a first degree felony offense to commit sexual battery on a nonconsenting victim over the age of 11 who is physically helpless to resist, coerced by threats or force, mentally or physically incapacitated, mentally defective and the offender knows this, or is coerced by a person in familiar, custodial, or official authority over a victim older than 11 but less than 18 years old.

The incest statute also protects minors from being taken advantage of sexually by penalizing sexual intercourse between family members of sufficient relationship by making it a third degree felony offense. Furthermore, section 880.04, F.S., penalizes the lewd and lascivious handling, fondling or assault upon a child under 14 years old by making it a second degree felony offense.

A question arises as to whether existing law applies to situations where a minor is encouraged by an adult to engage in sexual behavior but no actual sexual contact occurs. The general solicitation statute, Chapter 777, F.S., would not seem to apply if there is an incompleated crime of sexual battery

COPY

reproduced by

FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING

Tallahassee, FL 32399-0250

Series 18 Carton 1391

because for the crime of solicitation to occur, the offender must solicit (encourage) another person to commit an offense, and in this situation, the one doing the soliciting is committing the offense, not the minor who is being sexually approached. Unless the offender does some overt act beyond mere urging, the offense of "attempt" will not apply in this situation either. However, the solicitation of another to "give or receive of the body for licentious sexual intercourse without hire" is punishable as a second degree misdemeanor under the prostitution statute.

Currently, there is no statute which provides for enhanced penalties for acts of sexual battery committed by more than one person during the same criminal episode on another person. Therefore, if two persons committed the type of sexual battery punishable as a first degree felony on a victim during the same criminal episode, each would be punished for the first degree felony offense.

On the other hand, any person who agrees, conspires, combines, or confederates with another to commit such sexual battery commits criminal conspiracy and would be punished for a second degree felony offense under s. 777.04. However, if the conspirators are successful, they can be convicted of both criminal conspiracy and the first degree felony offense of sexual battery.

Nonconsensual sexual intercourse is prohibited by the sexual battery statute, s. 794.011, F.S., regardless of the victim's previous chastity. On the other hand, s. 794.05, F.S., commonly known as the statutory rape law, although available to penalize nonconsensual sexual intercourse, is most often used for penalizing consensual sexual intercourse. However, to prosecute for this offense, it must be shown that the defendant had unlawful carnal intercourse with a previously chaste unmarried person who is under 18 years of age. If the unchaste character of the victim is caused solely by previous intercourse between the defendant and the victim, this shall not be a defense under the statute.

When the statutory rape law was amended in 1921 to be gender-neutral, the Florida Supreme Court held in Deas v. State, 161 So. 729 (Fla. 1935), that the purpose of the statute was to protect youth from "the initial violation of their actual previous condition of sexual chastity rather than from the consequences of their subsequent voluntary indulgence in immorality" at 730.

Although the Florida Supreme Court in Lowe v. State, 19 So.2d 106 (Fla. 1944), construed the phrase "previous chaste character" to mean that the prosecutrix had not had illicit relations with anyone prior to the alleged offense, the Court has never been called on to determine whether previous nonconsensual intercourse would destroy the victim's chastity. However, persuasive authority exists in Nebraska and in Texas to suggest that previous nonconsensual intercourse does not destroy the victim's chastity for purposes of statutory rape.

B. Effect of Proposed Changes:

The bill would no longer permit consent to be a defense to the first degree felony offense of committing sexual battery on a mentally defective victim over the age of 11 years. This means that if a mentally defective person consented to the sexual battery (i.e., sexual intercourse), the offender would nevertheless be guilty of a first degree felony offense. Thus, all the prosecution would have to prove was that a person was mentally defective and engaged in sexual intercourse with the

defendant. "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

HB 134 would conform the phrase "11 years or younger" in the sexual battery statute to the Supreme Court's holding in Hansen by changing that phrase to "less than 12 years of age." Furthermore, the phrase "over the age of 11 years" found elsewhere in the sexual battery statute also concerning the victim's age would be changed to "12 years of age or older."

The provision in the sexual battery statute which prohibits nonconsensual sexual battery by an offender in familial, custodial, or official authority over the victim would be deleted from that statute. Instead, the bill would create another statute proscribing the solicitation and the actual commission of certain "sexual activity" on children over 11 but less than 18 years by a person in familial, custodial, ~~or~~ ~~official~~ authority over the child. The prohibited "sexual activity" would continue to include the definition of sexual battery, but it would also include masturbation.

The newly created statute would no longer require, as the sexual battery statute does, proof of lack of consent or that the offender used such familial authority to coerce the child. Solicitation of a child for "sexual activity" ~~would be a third degree felony offense, whereas the actual engaging in such activity with the child would be a first degree felony offense.~~

The bill would provide for enhanced penalties for acts of sexual battery committed by more than one person during the same criminal episode. The bill would only apply to the type of sexual battery punishable as a first or second degree felony and not to the type of sexual battery punishable as a life felony or capital felony. Therefore, if more than one person committed an act of the type of sexual battery punishable as a second degree felony, such persons would be punished as if it were a first degree felony. If they committed an act of the type of sexual battery punishable as a first degree felony, they would be punished as if it were a life felony.

The bill would change the statutory rape law by providing that it would be a second degree felony for any person to have unlawful carnal intercourse with another person under the age of 15, rather than 18 as it is now, if they were not married to each other. It would be a defense to such prosecution that the defendant was less than 3 years older than the victim. However, the victim's chastity would not be a defense.

The bill would also create a third degree felony offense if any person had unlawful carnal intercourse with any other person who was between the age of 15 and 18 years old, was of chaste character, and was not married to the offender. It would be a defense that the defendant was less than 3 years older than the victim.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, there would be no significant fiscal impact because of the bill.

REVISED: _____

BILL NO. HB 134

DATE: April 23, 1984

Page 4

III. COMMENTS:

To conform this bill to other bills passed favorably by the committee, the bill would need an amendment to conform all the applicable age references of victims in the sexual battery statute to the Supreme Court's holding in Hansen.

IV. AMENDMENTS:

None.

House of Representatives

SUBCOMMITTEE REPORT

File with Parent Committee

To: Chairman, Committee on Criminal Justice

The Subcommittee on Criminal Code (Subcom. I)

met at 1:00 o'clock on 2/6, 19 84,

in Room 314 HOB, and considered HB 134.

On motion to report the bill ☒ FAVORABLE

the vote was: ☐ FAVORABLE WITH AMENDMENTS
(number)

YEA	MEMBER	NAY
	Grant	
	Meffert	
X	McEwan	
X	Morgan	
X	Ready	
X	Thomas	

Total
Yeas 7

YEA	MEMBER	NAY
X	Titone	
X	Wetherell	
X	Upchurch, Chm.	

Total
Nays 0

Subcommittee Chairman

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<u>Name</u>	<u>Representing</u>	<u>Address</u>

(If additional persons, enter on reverse side and check here)

H-74

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R A GRAY BUILDING
Tallahassee, FL 32399-0250

Series 19 Carton 1346

At

Received by Parent Committee:

Date

Received by

COMMITTEE INFORMATION RECORD

House of Representatives

Committee on Criminal Justice

Bill No. 134

Date of meeting 4/5/84

Time 1:30

Place 314 HOB

FINAL ACTION: ☒ FAVORABLE
☐ FAVORABLE WITH AMENDMENTS
☐ FAVORABLE WITH SUBSTITUTE
☐ UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
<input checked="" type="checkbox"/>	Arnold	
<input checked="" type="checkbox"/>	Brantley	
<input checked="" type="checkbox"/>	Burke	
	Casas	
<input checked="" type="checkbox"/>	Clements	
<input checked="" type="checkbox"/>	Combee	
	Grant	
<input checked="" type="checkbox"/>	McEwan	
	Meffert	
	Morgan	
<input checked="" type="checkbox"/>	Ready	
	Reynolds	
<input checked="" type="checkbox"/>	Robinson	
<input checked="" type="checkbox"/>	Shelley	
<input checked="" type="checkbox"/>	Spaet	

Total
Yeas 13

YEA	MEMBER	NAY
<input checked="" type="checkbox"/>	Thomas	
	Titone	
	Upchurch	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Wetherell	
<input checked="" type="checkbox"/>	Martinez, Chm	

Total
Nays 1

COPY

reproduced by
 FLORIDA STATE ARCHIVES
 DEPARTMENT OF STATE
 R A GRAY BUILDING
 Tallahassee, FL 32399-0250
 Series 19 Carton 1346
 M. 1. 1. 1
 L. 1. 1. 4

Chairman

COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here)

By Senator Fox

40-534-84

See HB 134

1 A bill to be entitled
2 An act relating to sexual battery, amending s
3 794.011, F S , and creating s 794.012, F S ,
4 providing that persons who stand in familial,
5 custodial, or official authority to a child
6 over 11 years of age but under age 18 and who
7 solicit the child for sexual activity shall be
8 guilty of a third degree felony, and who engage
9 in sexual activity with the child shall be
10 guilty of a first degree felony, providing an
11 effective date
12

13 Be It Enacted by the Legislature of the State of Florida
14

15 Section 1. Subsection (4) of section 794.011, Florida
16 Statutes, is amended to read:

17 794 011 Sexual battery --

18 (4) A person who commits sexual battery upon a person
19 over the age of 11 years, without that person's consent, under
20 any of the following circumstances shall be guilty of a felony
21 of the first degree, punishable as provided in s 775.082, s.
22 775.083, or s. 775.084

23 (a) When the victim is physically helpless to resist

24 (b) When the offender coerces the victim to submit by
25 threatening to use force or violence likely to cause serious
26 personal injury on the victim, and the victim reasonably
27 believes that the offender has the present ability to execute
28 these threats

29 (c) When the offender coerces the victim to submit by
30 threatening to retaliate against the victim, or any other
31 person, and the victim reasonably believes that the offender

1 has the ability to execute these threats in the future
2 "Retaliation," as used in this section, includes, but is not
3 limited to, threats of future physical punishment, kidnapping,
4 false imprisonment or forcible confinement, or extortion

5 (d) When the offender, without the prior knowledge or
6 consent of the victim, administers or has knowledge of someone
7 else administering to the victim any narcotic, anesthetic, or
8 other intoxicating substance which mentally or physically
9 incapacitates the victim

10 (e) When the victim is older than 11 but less than 18
11 years of age and the offender is in a position of familial,
12 custodial, or official authority over the victim and uses this
13 authority to coerce the victim to submit-

14 (e)(f) When the victim is mentally defective and the
15 offender has reason to believe this or has actual knowledge of
16 this fact.

17 Section 2 Section 794 012, Florida Statutes, is
18 created to read:

19 794 012 Prohibited acts; persons in familial,
20 custodial, or official authority, penalties --

21 (1) For purposes of this section, "sexual activity"
22 means oral, anal, or vaginal penetration by, or union with,
23 the sexual organ of another or the anal or vaginal penetration
24 of another by any other object, or masturbation.

25 (2) Any person who stands in position of familial,
26 custodial, or official authority to a child over 11 but less
27 than 18 and who

28 (a) Solicits that child for sexual activity shall be
29 guilty of a felony of the third degree punishable as provided
30 in s 775.082, s 775 083, or s 775 084

1 (b) Engages in sexual activity with that child shall
2 be guilty of a felony of the first degree punishable as
3 provided in s 775 082, s 775 083, or s 775 084

4 (3) The willingness or consent of the child shall not
5 be a defense in these circumstances

6 Section 3 This act shall take effect October 1, 1994

7
8
9
10
11
12
13
14 *****

15 HOUSE SUMMARY

16 Provides that any person who stands in position of
17 familial, custodial, or official authority to a child
18 over 11 years of age but under 18 years of age and who
19 solicits the child for sexual activity shall be guilty of
20 a felony of the third degree and who engages in sexual
21 activity with the child shall be guilty of a felony of
22 the first degree.
23
24
25
26
27
28
29
30
31

By Senator Crawford
13-218-84

This public document is promulgated at a cost of \$8.78 per printed page for 1500 copies to inform the Legislature and the public of proposed legislation.

1 A bill to be entitled

2 An act relating to sexual battery; amending s

3 794 011, F S ; clarifying references to the age

4 of the victim, providing penalties; providing

5 an effective date.

6

7 WHEREAS, the District Court of Appeal, Fourth District,

8 held in State v Carroll, 378 So 2d 4 (Fla 4th DCA 1980),

9 cert denied, 385 So.2d 761 (Fla. 1980), that the phrase "11

10 years of age or younger," as used in the sexual battery

11 statute in reference to the age of the victim, did not

12 encompass a child who was 11 years and several months old, and

13 WHEREAS, the Supreme Court of Florida, in Hansen v.

14 State, 421 So 2d 504 (Fla. 1982), resolved a conflict between

15 the Carroll decision and the decision of another District

16 Court of Appeal by holding that the phrase referred to the

17 time up to, but not including, the victim's 12th birthday, and

18 WHEREAS, the decision of the Supreme Court reflects

19 correctly the intent of the Legislature, and

20 WHEREAS, the Legislature desires to remove any

21 remaining doubts as to the meaning of the statute, NOW,

22 THEREFORE,

23

24 Be It Enacted by the Legislature of the State of Florida

25

26 Section 1. Section 794.011, Florida Statutes, is

27 amended to read:

28 794 011 Sexual battery.--

29 (1) Definitions:

30 (a) "Offender" means a person accused of a sexual

31 offense.

(b) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent or due to any other act committed upon that person without his or her consent.

(d) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

(e) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(f) "Sexual battery" means 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 shall not include acts done for bona fide medical purposes.

(g) "Victim" means the person alleging to have been the object of a sexual offense.

(h) "Consent" means intelligent, knowing, and voluntary consent and shall not be construed to include coerced submission.

(2) A person 18 years of age or older who commits sexual battery upon, or injures the sexual organs of, a person less than 12 1/2 years of age or younger in an attempt to commit sexual battery upon said person commits a capital felony punishable as provided in ss 775 082 and 921 141 If the offender is under the age of 18, that person shall be

1 guilty of a life felony, punishable as provided in s 775 082,
2 s 775.083, or s 775 084.

3 (3) A person who commits sexual battery upon a person
4 12 years of age or older ~~over the age of 11 years~~, without
5 that person's consent, and in the process thereof uses or
6 threatens to use a deadly weapon or uses actual physical force
7 likely to cause serious personal injury shall be guilty of a
8 life felony, punishable as provided in s 775 082, s 775 083,
9 or s. 775 084.

10 (4) A person who commits sexual battery upon a person
11 12 years of age or older ~~over the age of 11 years~~, without
12 that person's consent, under any of the following
13 circumstances shall be guilty of a felony of the first degree,
14 punishable as provided in s. 775 082, s. 775 083, or s
15 775.084:

16 (a) When the victim is physically helpless to resist

17 (b) When the offender coerces the victim to submit by
18 threatening to use force or violence likely to cause serious
19 personal injury on the victim, and the victim reasonably
20 believes that the offender has the present ability to execute
21 these threats.

22 (c) When the offender coerces the victim to submit by
23 threatening to retaliate against the victim, or any other
24 person, and the victim reasonably believes that the offender
25 has the ability to execute these threats in the future
26 "Retaliation," as used in this section, includes, but is not
27 limited to, threats of future physical punishment, kidnapping,
28 false imprisonment or forcible confinement, or extortion

29 (d) When the offender, without the prior knowledge or
30 consent of the victim, administers or has knowledge of someone
31 else administering to the victim any narcotic, anesthetic, or

other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is 12 years of age or older than 11 but less than 18 years of age and the offender is in a position of familial, custodial, or official authority over the victim and uses this authority to coerce the victim to submit

(f) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact

(5) A person who commits sexual battery upon a person 12 years of age or older ~~over the age of 11 years~~, without that person's consent, and in the process thereof uses physical force and violence not likely to cause serious personal injury shall be guilty of a felony of the second degree, punishable as provided in s 775.082, s. 775 083, or s 775 084.

Section 2 This act shall take effect October 1, 1984.

SENATE SUMMARY

Clarifies provisions relating to age of sexual battery victims The term "11 years of age or younger" is changed to "less than 12 years of age," and the term "over the age of 11 years" is changed to "12 years of age or older."