

## **CS/CS/HB 1297 – Capital Sexual Battery**

This bill amends s. 794.011, F.S., adding the following language to 794.011(2)(a), F.S. (new language in bold): “A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082, F.S. **and 921.1425, F.S. In all capital cases under this section, the procedure set forth in s. 921.1425 shall be followed in order to determine a sentence of death or life imprisonment. If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within 45 days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause.**”

Currently, s. 794.011(2)(a), F.S. and s. 794.011(8)(c), F.S. can only receive life imprisonment, but with the new language above and the creation of s. 921.1425, F.S., the choice is now between death or life imprisonment. S. 921.1425, F.S. outlines the procedures for such a determination, whether by jury trial or if a defendant waves a right to a jury trial. For a jury trial, if at least eight jurors determine that the defendant should receive a death sentence, “the jury’s recommendation to the court shall be a sentence of death.” Once death is recommended, “the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death.” If there are fewer than eight jurors, the court must sentence the defendant to life imprisonment. If the jury is waived, the court will determine whether a life or death sentence will be applied. Both situations require that at least two aggravating factors have been found beyond a reasonable doubt, whether by a unanimous jury or by the court.

Finally, s. 924.07, F.S. is amended, adding that the state may appeal from “the sentence in a case of capital sexual battery on the ground that it resulted from the circuit court’s failure to comply with sentencing procedures under s. 921.1425, F.S., including by striking a notice of intent to seek the death penalty, refusing to impanel a capital jury, or otherwise granting relief that prevents the state from seeking a sentence of death.”

Per DOC, in FY 18-19, there were 180 new commitments for violations of s. 794.011(2)(a), F.S. and s. 794.011(8)(c), F.S., and in FY 19-20, there were 145 new commitments. In FY 20-21, there were 83 new commitments, and there were 179 in FY 21-22.

Per DOC, 3 inmates were admitted to the prison system in FY 18-19 with a death sentence and 378 inmates were admitted with a life sentence. In FY 19-20, 2 inmates received a death sentence, with 286 receiving life sentences. In FY 20-21, 2 inmates received a death sentence, with 101 receiving life sentences, and in FY 21-22, 3 inmates were admitted who received death sentences and 295 received life sentences.

Furthermore, those inmates executed in FY 17-18, FY 18-19, and FY 19-20 averaged 27 years in prison, with the shortest time between initial incarceration and execution being 20 years. Assuming that future inmates on death row would have similar time in prison, any impact on prison beds should not be felt for at least a decade.

**CONFERENCE APPROVED ESTIMATE: No Impact within  
Forecast Window**