

**STORAGE NAME:** h0735s1.cpcs.doc

**DATE:** April 13, 2001

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
ANALYSIS**

**BILL #:** CS/HB 735

**RELATING TO:** Rules of Evidence/Sexual Battery

**SPONSOR(S):** Committee on Crime Prevention, Corrections & Safety and Representative Gannon

**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) JUDICIAL OVERSIGHT YEAS 7 NAYS 0
  - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 5 NAYS 0
  - (3) COUNCIL FOR SMARTER GOVERNMENT
  - (4)
  - (5)
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I. SUMMARY:

The committee substitute amends the "rape shield statute" to apply the statute to any civil action brought under the Florida Civil Rights Act involving the perpetration or alleged perpetration of a sexual battery under s. 794.011, F.S. Accordingly, evidence of the claimant's prior consensual sexual activity between the claimant and other persons will not be admissible in most situations when the claim involves the alleged commission of acts prohibited by s. 794.011, F.S. Under current law, the rape shield statute would not apply to actions brought pursuant to the Florida Civil Rights Act since the statute is limited to criminal prosecutions.

The committee substitute also includes a definition of the term "vagina" or "vaginal" for the purposes of the sexual battery and lewd and lascivious statutes. The term is defined as "the internal or external parts of the sexual organ of a female".

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida's Rape Shield Law

Section 794.022, F.S., sometimes called the "rape shield statute", is a codification of the evidentiary rule of relevancy that a sexual battery victim's prior sexual activity with a person other than the accused<sup>1</sup> is generally irrelevant for determining the guilt of the person accused of sexual battery under s. 794.011, F.S. Such evidence may be admissible only if, in a hearing outside the presence of the jury, the evidence tends to show that it was not the accused who committed the act or if the evidence goes to the issue of the victim's consent. Section 794.022(3), F.S., provides that the victim's reputation for prior sexual conduct is inadmissible. The underpinnings of this statute are based on the premise that a sexual battery victim should be able to come forward and testify against the alleged perpetrator without having the victim's prior sexual activities become the focal point of the trial, rather than the guilt or innocence of the accused. See, e.g., Marr v. State, 494 So. 2d 1139 (Fla. 1986).

Section 794.022, F.S., does not apply in civil actions. By its own terms, the statute is limited to criminal prosecutions under section 794.011, F.S. In Department of Business and Professional Regulation v. Wise, 575 So. 2d 713 (Fla. 1<sup>st</sup> DCA 1991), the court rejected the department's claim that the statute was applicable to an administrative hearing. The court explained:

Section 794.022 is expressly limited by its own language to "prosecution[s] under s. 794.011." Since the hearing before the hearing officer was an administrative hearing rather than a criminal prosecution for sexual battery, the rape shield statute was simply not applicable.

Wise, 575 So. 2d at 715.

Florida Civil Rights Act

Sections 760.01-760.11 and 509.092, F.S., make up the Florida Civil Rights Act of 1992. The general purposes of the act are to secure for all individuals within the state freedom from

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<sup>1</sup> "Section 794.022 does not mention the admissibility of evidence of prior sexual activity between the victim and the defendant. Therefore, the common law rule that such evidence is admissible on the issue of consent still controls." Charles W. Ehrhardt, Florida Evidence § 404.7 at 177 (2000 ed.)

discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, as well as to promote the interests, rights, and privileges of individuals within the state. Section 760.01(3), F.S., provides that the act shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

Section 760.10(1)(a), F.S., makes it an unlawful employment practice for an employer to discharge, or to fail or refuse to hire, any individual or to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such person's race color, religion, sex, national origin, age, handicap, or marital status. Section 760.11, F.S., provides administrative and civil remedies for persons aggrieved by violations of the Florida Civil Rights Act. The remedies available include an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, punitive damages not to exceed \$100,000, and attorney's fees and costs.

To prove a claim for a hostile work environment due to sexual harassment, the employee must prove: (1) the employee belonged to a protected group; (2) the employee was subjected to unwelcome sexual harassment; (3) the harassment complained of was based upon sex; (4) the harassment complained of affected terms, conditions or privileges of employment; and (5) the employer knew or should have known of the harassment and failed to take prompt remedial action. See, e.g. Fromm-Vane v. Lawnwood Medical Center, Inc., 995 F. Supp. 1471 (S.D. Fla. 1997).

C. EFFECT OF PROPOSED CHANGES:

The bill amends the Rape Shield Law, s. 794.022, F.S., to add a new subsection (6). The bill provides that the rules of evidence provided in this section apply in any civil action brought under the Florida Civil Rights Act involving the perpetration or alleged perpetration of a sexual battery under s. 794.011, F.S. Accordingly, evidence of the claimant's prior consensual sexual activity between the claimant and any person other than the offender will not be admissible in most situations when the claim involves the alleged commission of acts prohibited by s. 794.011, F.S. Under current law, s. 794.022, F.S., would not apply to actions brought pursuant to the Florida Civil Rights Act since s. 794.022, F.S., is limited to criminal prosecutions.

The bill does not preclude the possible admission of sexual activity with others if such evidence tends to establish a pattern of conduct or behavior on the part of the claimant that is so similar to the conduct or behavior in the case that it is relevant to the issue of consent. See, s. 794.022(2), F.S.

The bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See Section II. C. Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections & Safety adopted a strike everything amendment which included a definition of the term "vagina" or "vaginal" for purposes of the sexual battery and lewd and lascivious offenses statutes. The term is defined as "the internal or external parts of the sexual organ of a female". The bill, as amended, was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

L. Michael Billmeier

Lynne Overton

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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