



s. 787.01(3), F.S., it is a life felony for a person to kidnap a child under the age of 13, if any of the following offenses are committed in the course of committing the kidnapping:

- Aggravated child abuse, as defined in s. 827.03, F.S.
- Sexual battery, as defined in ch. 794, F.S., against the child.
- Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04, F.S.
- A violation of s. 796.03, F.S. or s. 796.04, F.S., relating to prostitution upon the child.
- Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151, F.S.

The life felony for kidnapping is ranked in Level 10 of the offense severity ranking chart of the Criminal Punishment Code.

Section 787.01(1), F.S. defines the term “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to hold for ransom or reward or as a shield or hostage, commit or facilitate commission of any felony, inflict bodily harm upon or to terrorize the victim or another person, or interfere with the performance of any governmental or political function. Confinement of a child under the age of 13 is against the child’s will within the meaning of subsection (1) if that confinement is without the consent of the child’s parent or legal guardian.

#### **B. False Imprisonment of a Child Under the Age of 13**

Section 787.02(2), F.S., provides that it is a third degree felony for a person to commit false imprisonment. However, under s. 787.01(3), F.S., it is a first degree felony for a person to falsely imprison a child under the age of 13 if any of the same type of offenses previously described (regarding kidnapping of a child under age 13) is committed in the course of committing the false imprisonment.

The first degree felony for false imprisonment is a Level 9 offense.

Section 787.02(1), F.S. defines the term “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will. Confinement of a child under the age of 13 is against the child’s will within the meaning of s. 787.02, F.S., if that confinement is without the consent of the child’s parent or legal guardian.

#### **C. Luring**

Section 787.025(2)(a), F.S., provides that it is a third degree felony to commit the offense of luring. To commit the offense of luring the person must: 1) be over the age of 18; 2) have previously been convicted of a sexual battery offense under ch. 794, F.S., or a lewd offense under s. 800.04, F.S., or a violation of a similar law of another jurisdiction; and 3) intentionally lure or entice, or attempt to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose. The Florida Supreme

Court has interpreted “for other than a lawful purpose” as “for an ‘illegal’ purpose, i.e., with intent to violate Florida law by committing a crime.” *State v. Brake*, 796 So.2d 522, 529 (Fla. 2001).

Luring is an unranked offense. Pursuant to s. 921.0023, F.S., an unranked third degree felony defaults to Level 1.

The luring or enticing of a child, or attempted luring or enticing, of a child under the age of 12 into a structure, dwelling, or conveyance without the consent of the child’s parent or legal guardian is prima facie evidence of other than a lawful purpose. s. 787.025(2)(b), F.S.

Section 787.025(3), F.S., provides three affirmative defenses to the crime of luring:

- The person reasonably believed that his or her action was necessary to prevent the child from being seriously injured.
- The person lured or enticed, or attempted to lure or entice, the child under the age of 12 into a structure, dwelling, or conveyance for a lawful purpose.
- The person’s actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the child.

### **III. Effect of Proposed Changes:**

Senate Bill 1066 amends s. 787.01, F.S., to make it a life felony to kidnap or falsely imprison a child under the age of 16 when one or more statutorily-specified offenses are committed in the course of committing the kidnapping or false imprisonment. Current law also punishes this act as a life felony, but the kidnapped or falsely imprisoned child must be under the age of 13.

The bill also amends s. 787.02, F.S., to make it a second degree felony for a person to commit the offense of luring. To commit the offense of luring the person must: 1) be over the age of 18; 2) have previously been convicted of a sexual battery offense under ch. 794, F.S., or a lewd offense under s. 800.04, F.S., or a violation of a similar law of another jurisdiction; and 3) intentionally lure or entice, or attempt to lure or entice, a child under the age of 16 into a structure, dwelling, or conveyance for other than a lawful purpose. Current law punishes this same act as a third degree felony and the lured child must be under the age of 12.

Luring is an unranked offense. Pursuant to s. 921.0023, F.S., an unranked second degree felony defaults to Level 4.

The bill also reenacts and amends s. 921.0022(3)(f), (i), and (j), F.S., relating to the offense severity ranking chart of the Criminal Punishment Code to incorporate the amendments to s. 787.02, F.S., in reference thereto and to conform provisions to other changes made by the bill.

The bill also reenacts ss. 435.03(2)(j) and (k), 435.04(2)(k) and (l), 775.21(4), 903.133, and 910.14, F.S., relating respectively to screening standards, the Florida Sexual Predator Act, bail on appeal, and kidnapping, to incorporate the amendments to ss. 787.01, 787.02, and 787.025, F.S., in reference thereto.

The bill also reenacts ss. 943.0435(1)(a), 943.0585, 943.059, 944.606(1)(b), 944.607(1)(a), 948.01(15), and 948.06(2)(a), F.S., relating respectively to sexual offender registration, sealing and expunction, definition of the term “sexual offender,” and probation and community control, to incorporate the amendments to ss. 787.01, 787.02, and 787.025, F.S., in reference thereto.

The bill takes effect October 1, 2003.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

House Bill 63 is identical to SB 1066. The Criminal Justice Impact Conference has estimated that HB 63 is likely to have an insignificant prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.