

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 640

INTRODUCER: Judiciary Committee, Senators Miller and Lynn

SUBJECT: Luring or Enticing a Child

DATE: March 17, 2006

REVISED: \_\_\_\_\_

|    | ANALYST   | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|-----------|----------------|-----------|------------------|
| 1. | Erickson  | Cannon         | CJ        | <b>Favorable</b> |
| 2. | Luczynski | Maclure        | JU        | <b>Fav/CS</b>    |
| 3. |           |                |           |                  |
| 4. |           |                |           |                  |
| 5. |           |                |           |                  |
| 6. |           |                |           |                  |

## I. Summary:

This bill provides that it is a misdemeanor of the first degree for a person 18 years of age or older to 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 bill also provides that it is a felony of the third degree for a person 18 years of age or older who, having been previously convicted of the misdemeanor “luring or enticing a child” (luring) offense, to 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 bill clarifies the intent of the Legislature that persons “18 years of age or older” are subject to the statute. The bill deletes the presumption of what constitutes the “other than a lawful purpose” element of the offense, s. 787.025(2)(b), F.S., which has been declared unconstitutional by the Florida Supreme Court.<sup>1</sup> The bill also corrects references to the felony luring statute in several statutes to reflect that the references are solely to violations of the existing felony luring offense, not to the misdemeanor offense or the felony offense based on a prior misdemeanor luring conviction. The bill also authorizes a law enforcement officer to make a warrantless arrest for a violation of the luring statute where there is probable cause to believe the person committed such violation.

This bill substantially amends section 787.025, Florida Statutes. This bill amends the following sections of the Florida Statutes: 775.21, 794.0115, 943.0435, 944.606, 944.607, 948.32, and 901.15.

<sup>1</sup> *State v. Brake*, 796 So. 2d 522, 529 (Fla. 2001).

## II. Present Situation:

### Luring or Enticing a Child

Section 787.025(2)(a), F.S., provides that it is a third degree felony to commit the offense of luring.<sup>2</sup> 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 or lascivious 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.”<sup>3</sup>

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.

### Statutes Referencing the Luring Statute as a Qualifying Offense

#### *The Florida Sexual Predator Act*

Section 775.21(4), F.S., designates a person as a sexual predator who, among other requirements, commits a current qualifying felony offense (which includes a felony violation or attempt thereof, of s. 787.025, F.S.) on or after October 1, 1993. Section 775.21(4), F.S., provides that a sexual predator is subject to registration and community and public notification. Furthermore, s. 775.21(10)(b), F.S., provides penalties including:

A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of . . . s. 787.025, where the victim is a minor and the defendant is not the victim’s parent; . . . who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other

<sup>2</sup> Luring is an unranked offense. Under s. 921.0023, F.S., an unranked third degree felony defaults to Level 1. This means that a person who commits this offense will receive a non-prison sanction as the lowest permissible sentence scored unless the person has additional offenses, prior offenses, or sentencing point factors or multipliers that might score a lowest permissible sentence of imprisonment. However, even if the lowest permissible sentence is a non-prison sanction, the sentencing court may impose a greater sentence of up to five-years imprisonment, the maximum penalty for a third degree felony as provided in s. 775.082, F.S.

<sup>3</sup> *Brake*, 796 So. 2d at 529. While the Court in *Brake* upheld the constitutionality of the statute on a vagueness challenge to the “other than a lawful purpose” language, the court struck down a provision of the law that provides that luring a child “without the consent of the child’s parent or legal guardian shall be prima facie evidence of other than a lawful purpose.” s. 787.025(2)(b), F.S. The Court held that the Legislature had created an unconstitutional statutory presumption. This provision remains in the law.

place where children regularly congregate, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

***Dangerous Sexual Felony Offender Act***

Section 794.0115, F.S., is the “Dangerous Sexual Felony Offender Act.” Under this section, a person who is convicted of any of a list of sexual felony offenses, including s. 787.025, F.S., that the person committed when he or she was 18 years of age or older is subject to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment if the person meets one of a list of criteria, including having a prior conviction for violating s. 787.025, F.S.

***Sexual offender registration***

Section 943.0435, F.S., requires that certain persons who meet the definition of “sexual offender,” as provided in s. 943.0435(1), F.S., which includes a person who has been convicted of violating s. 787.025, F.S., must register as such according to the registration requirements of the section. Section 943.0435(1), F.S., provides that, as used in the section, “sexual offender” means any of the three described persons:

- A person who has been released on or after October 1, 1997, from the sanction imposed in this state or any other jurisdiction for a conviction for committing, or attempting, soliciting, or conspiring to commit, any of a list of qualifying offenses, including s. 787.025, F.S., proscribed in this state or similar offenses in another jurisdiction.
- A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction.
- A person who establishes or maintains a residence in this state and who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of a list of qualifying offenses, including s. 787.025, F.S., or any similar offense in another jurisdiction.

Section 944.607, F.S., requires the Department of Corrections (DOC) to notify the Florida Department of Law Enforcement (FDLE) of information regarding certain persons who meet the definition of “sexual offender” in s. 944.607(1), F.S. Registration requirements for this sexual offender are provided both in this section and in s. 943.0435, F.S. Section 944.607(1), F.S., provides that, as used in the section, “sexual offender” means either of the following persons:

- A person who is in the custody or control of, or under the supervision of, the DOC or is in the custody of a private correctional facility on or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of a list of qualifying offenses, including s. 787.025, F.S.
- A person who is in the custody or control of, or under the supervision of, the DOC or is in the custody of a private correctional facility and who establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state but has been designated as a sexual predator, as a sexually violent predator, or by

another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction.

***Notification of release of a sexual offender***

Section 944.606, F.S., provides that when a sexual offender<sup>4</sup> is being released from incarceration, the DOC must provide certain identification information about the offender, the offender's intended address upon release, if known, the offender's fingerprints, and a digitized photo of the offender to the sheriff of the county (or, if applicable, the police chief of the municipality) where the victim resides, the sheriff of the county from where the offender was convicted, and the FDLE. The DOC may also provide this information to the victim, the victim's parents (if the victim is a minor), or a member of the public, if requested. The DOC must also provide criminal and correction records and nonprivileged personnel and treatment records, if available, regarding the offender to the sheriffs previously described, if requested. Sexual offender is defined as a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, certain criminal offenses, including s. 787.025, F.S.<sup>5</sup>

***Notification of arrest of persons for certain sexual offenses***

Section 948.32(1), F.S., provides that when any state or local law enforcement agency investigates or arrests a person for committing, or attempting, soliciting, or conspiring to commit, a violation of certain criminal offenses, including s. 787.025, F.S., the law enforcement agency shall contact the Department of Corrections to verify whether the person under investigation or under arrest is on probation, community control, parole, conditional release, or control release.

**Lawful Warrantless Arrest of Person Committing Child Abuse**

Section 901.15(8), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed child abuse, as defined in s. 827.03, F.S. Violation of the luring statute, s. 787.025, F.S., does not constitute child abuse under s. 827.03, F.S.

**III. Effect of Proposed Changes:**

This bill amends s. 787.025, F.S., the luring statute, to provide that it is a misdemeanor of the first degree for a person 18 years of age or older<sup>6</sup> to 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 bill also provides, in a separate paragraph, that it is a felony of the third degree for a person 18 years of age or older, having been previously convicted of the

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<sup>4</sup> The qualifying offenses listed under the definition of "sexual offender" in this section are identical to the list of qualifying offenses in ss. 943.0435 and 944.607, F.S.

<sup>5</sup> Section 944.606(1)(b), F.S.

<sup>6</sup> The current law states that "a person over the age of 18" is subject to the luring or enticing a child statute. Because this language could be interpreted such that the law would not apply to a person 18 years of age, the bill modifies the language for the existing luring offense to "a person 18 years of age or older," to match the Legislature's intent. The bill also adopts the same language, "a person 18 years of age or older," for the new misdemeanor luring offense and the new felony luring offense (based on a prior conviction of the misdemeanor offense).

misdemeanor “luring or enticing a child” (luring) offense, to 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 current law solely provides that the same luring or enticing behavior is punishable as a felony of the third degree if the defendant has been previously convicted of a violation of ch. 794, F.S., or s. 800.04, or a violation of a similar law of another jurisdiction.

The bill also provides a definition of “convicted” in the luring statute, which indicates that it encompasses a withhold of adjudication.

The bill deletes the presumption of what constitutes the “other than a lawful purpose” element of the offense, s. 787.025(2)(b), F.S., which has been declared unconstitutional by the Florida Supreme Court.<sup>7</sup>

The bill also corrects the following references to the felony luring offense in several statutes to reflect that the references are solely to the existing felony luring offense.<sup>8</sup> The references to the felony luring offense are found in:

- Section 775.21, F.S., the Florida Sexual Predator Act, which defines sexual predator, and provides for registration and community and public notification.
- Section 794.0115, F.S., the Dangerous Sexual Felony Offender Act, which provides for mandatory sentencing of qualifying sexual offenders.
- Sections 943.0435 and 944.607, F.S., which define sexual offender, and require qualifying sexual offenders to register as such and report certain information.
- Section 944.606, F.S., which requires the Department of Corrections to provide certain information about a sexual offender to designated law enforcement agencies if the person is released after serving a period of incarceration for any offense.
- Section 948.32, F.S., which requires a law enforcement agency that investigates or arrests a person for a specified offense to verify with the Department of Corrections whether the person is on probation, community control, parole, conditional release, or control release.

The bill also modifies s. 901.15(8), F.S., to include probable cause to believe that a person has committed a violation of the luring statute, s. 787.025, F.S., as the basis for a lawful arrest by an officer without a warrant.

The bill takes effect July 1, 2006.

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<sup>7</sup> *Brake*, 796 So. 2d at 529.

<sup>8</sup> This is the felony luring violation, currently at s. 787.025(2)(a), F.S., that is based on a previous conviction of a violation of ch. 794, F.S. or s. 800.04, F.S. (offenses involving criminal sexual activity). Arguably, the misdemeanor luring offense and the felony luring offense (based on a prior conviction of the misdemeanor offense) would not satisfy the requirements of the referencing statutes, which reference various criminal sexual offenses, including the current felony luring offense, as qualifying offenses. See *State v. Robinson*, 873 So. 2d 1205, 1217 (Fla. 2004) (holding that where the crime contained no sexual element, the designation of the defendant as a sexual predator based solely on his conviction for such crime violates his constitutional right to due process of law).

**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:**

The Office of Economic and Demographic Research of the Florida Legislature estimates that the bill has no prison bed impact. Arguably, it could have some additional impact because the misdemeanor luring offense created by the bill is a new qualifying offense for the felony luring offense. However, the additional impact is probably insignificant because the felony luring offense is an unranked offense, thus under s. 921.0023, F.S., it defaults to Level 1, which means that the sentence is likely not to involve a state prison sentence.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The misdemeanor luring or enticing offense created by the bill appears to address a case recently reported by the *St. Petersburg Times*. According to the newspaper, law enforcement officers were unable to make a legal arrest of a Dade City man who allegedly lured an 11-year-old girl into the man's pickup truck because felony luring applies only to an adult with a previous conviction for a sexual battery or lewd offense, neither of which the Dade City man had. The

newspaper also reported that the offenses of kidnapping and interfering with custody did not apply because the girl did not get into the man's truck.<sup>9</sup>

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>9</sup> Shannon Colavecchio-Van Sickler, *Law Sought to Close Gap in Child Protection*, St. Petersburg Times, Nov. 15, 2005, [http://www.sptimes.com/2005/11/15/Hillsborough/Law\\_sought\\_to\\_close\\_g.shtml](http://www.sptimes.com/2005/11/15/Hillsborough/Law_sought_to_close_g.shtml) (last visited Mar. 10, 2006).





## **VIII. Summary of Amendments:**

None.

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