

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: Criminal Justice Committee

BILL: CS/SB 1978

INTRODUCER: Criminal Justice Committee; and Criminal Justice Committee

SUBJECT: Crimes/Use of Minor to Facilitate

DATE: March 21, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill, which was recommended by the Violent Crime and Drug Control Council, provides for the reclassification of the felony degree of any forcible felony to the next higher degree if, during the commission or attempted commission of the offense, the offender was an adult and the offender willfully:

- Used or hired a person 13 years of age or older but younger than 18 years of age as an agent or employee of the offender or others to facilitate the commission or attempted commission of the offense;
- Conspired with a person 13 years of age or older but younger than 18 years of age to commit the offense;
- Solicited or otherwise caused a person 13 years of age or older but younger than 18 years of age to commit or attempt to commit the offense;
- Used a person 13 years of age or older but younger than 18 years of age to aid or abet in the commission or attempt to commit the offense; or
- Used a person 13 years of age or older but younger than 18 years of age to assist or attempt to assist in avoiding detection or apprehension for the offense.

The bill also provides for enhanced penalties for the reclassified offense.

This bill creates section 775.0851 of the Florida Statutes.

II. Present Situation:

Section 777.04(1), F.S., provides:

(1) A person who attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such offense, but fails in the perpetration or is intercepted or prevented in the execution thereof, commits the offense of criminal attempt, ranked for purposes of sentencing as provided in subsection (4). *Criminal attempt includes the act of an adult who, with intent to commit an offense prohibited by law, allures, seduces, coaxes, or induces a child under the age of 12 to engage in an offense prohibited by law.* (Italics provided.)

Subsection (4) of the statute provides that most felony criminal attempts are ranked for purposes of sentencing under ch. 921, F.S., one level below the ranking under s. 921.0022, F.S., or s. 921.0023, F.S., of the offense attempted. (If the criminal attempt is of an offense ranked in Level 1 or Level 2, such offense is a first degree misdemeanor.)

In general, the misdemeanor or felony degree of criminal attempt is as follows:

- First degree felony, if the offense attempted is a capital felony;
- Second degree felony, if the offense attempted is a life felony or a first degree felony;
- Third degree felony if the offense attempted is a second degree felony, third degree felony burglary, or a third degree felony ranked in Levels 3-10;
- First degree misdemeanor, if the offense attempted is a third degree felony (not previously described); and
- Second degree misdemeanor, if the offense attempted is a first or second degree misdemeanor.

Section 827.04, F.S., provides, in part, that it is a first degree misdemeanor to induce or endeavor to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to remain a delinquent child.

Section 847.0135(3), F.S., provides that it is a third degree felony to knowingly utilize a computer on-line service, Internet service, or local bulletin board service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in ch. 794, F.S., relating to sexual battery; ch. 800, F.S., relating to lewdness and indecent exposure; or ch. 827, F.S., relating to child abuse.

Section 893.13(4), F.S., provides that, except as authorized by ch. 893, F.S., it is unlawful for any person 18 years of age or older to deliver any controlled substance to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of such a substance, or to use such person to assist in avoiding detection or apprehension for a violation of this chapter. This offense is a first degree felony or second degree felony depending on the controlled substance.

Section 776.08, F.S., defines a “forcible felony” as “treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.”

III. Effect of Proposed Changes:

The bill, which was recommended by the Violent Crime and Drug Control Council, provides for the reclassification of the felony degree of any forcible felony as defined in s. 776.08, F.S., to the next higher degree if, during the commission or attempted commission of the offense, the offender was an adult and the offender willfully:

- Used or hired a person 13 years of age or older but younger than 18 years of age as an agent or employee of the offender or others to facilitate the commission or attempted commission of the offense;
- Conspired with a person 13 years of age or older but younger than 18 years of age to commit the offense;
- Solicited or otherwise caused a person 13 years of age or older but younger than 18 years of age to commit or attempt to commit the offense;
- Used a person 13 years of age or older but younger than 18 years of age to aid or abet in the commission or attempt to commit the offense; or
- Used a person 13 years of age or older but younger than 18 years of age to assist or attempt to assist in avoiding detection or apprehension for the offense.

For purposes of sentencing under ch. 921, F.S., under ch. 921, F.S., a felony offense that is reclassified is ranked one level above the ranking under s. 921.0022, F.S., or s. 921.0023, F.S., of the offense committed.

Notwithstanding any other provision of law, the court may sentence the offender as follows:

- In the case of an offense reclassified to a life felony or a first degree felony, for life.
- In the case of an offense to a second degree felony, for a term of years not exceeding 30.

The bill takes effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill reclassifies forcible felonies and imposes penalties greater than would be imposed absent the reclassification. While a defendant may not be subject to multiple punishments for the same offense in violation of the Fifth Amendment to the U.S. Constitution,¹ case law may suggest that the reclassification and penalty provisions of the bill are not impermissible multiple punishments. For example, in *State v. Whitehead*, 472 So.2d 730, 732 (Fla.1985), the Florida Supreme Court determined that a reclassification and enhanced penalty did not constitute impermissible multiple punishments.

[T]he defendant was convicted of second degree murder with a firearm. Section 775.087(1) provided that when a person commits a felony with a firearm the sentence is to be reclassified one category higher. Section 775.087(2) provided that people who commit specified crimes with a firearm are required to serve three years before becoming eligible for parole. In holding that applying both of these statutes was not an improper double enhancement, the court explained:

Determination of punishment for crimes is a legislative matter. Because the legislature has provided both these subsections, both are to be followed. Absent an indication from the legislature that these subsections are an either/or proposition, both subsections will be followed.

Spann v. State, 772 So.2d 38, 39 (Fla. 4th DCA 2000), summarizing the holding *Whitehead*.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, had not met to consider the bill at the time this analysis was completed. A preliminary impact estimate by the Legislature's Office of Economic and Demographic Research (EDR) is that EDR cannot determine if the bill has

¹ Protection against multiple punishments for the same offense emanates from the Double Jeopardy Clauses of the U.S. Constitution and the Florida Constitution. See *Hunsicker v. State*, 881 So.2d 1166, 1169 (Fla. 5th DCA 2004), *review denied*, 894 So.2d 970 (Fla.2005).

a prison bed impact because EDR does not have a way to determine how often minors are used in the commission or attempted commission of a crime.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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