

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 1136

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee;
and Senator Collins

SUBJECT: Age as an Element of a Criminal Offense

DATE: April 21, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	Fav/CS
2.	Atchley	Harkness	ACJ	Fav/CS
3.	Wyant	Siples	FP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1136 creates s. 787.001, F.S., to specify that ignorance or misrepresentation of a victim's age is not a defense to certain offenses, when the criminality of conduct depends upon the victim being below a certain age. A bona fide belief that a victim is over a specified age is also not a defense.

The bill prohibits such defenses from being raised in a prosecution for any offense related to kidnapping, false imprisonment, luring or enticing a child, interference with custody, removing minors from the state or concealing minors contrary to state agency order or court order, human trafficking, or human smuggling. However, the bill provides an exception for s. 787.30, F.S., relating to the employment of persons in adult entertainment establishments.

The bill amends s. 787.025, F.S., to increase the penalties for specified offenses involving luring or enticing a child. Additionally, the bill increases the age of such child from 12 to 14 years of age.

The bill amends s. 921.022, F.S., to rank offenses of luring or enticing a child on the offense severity ranking chart of the Criminal Punishment Code as a Level 7.

The bill may have a positive indeterminate prison bed impact on the Department of Corrections. See Section V., Fiscal Impact Statement.

The bill takes effect October 1, 2025.

II. Present Situation:

Luring or Enticing a Minor

It is a first degree misdemeanor¹ for a person over the age of 18 to intentionally lure or entice, or attempt to lure or entice, a child under the age of 12 into a structure,² dwelling,³ or conveyance⁴ for other than a lawful purpose.⁵ A second or subsequent offense is a third degree felony.^{6,7}

It is a third degree felony if the offender being charged with luring or enticing a minor, has previously been convicted of a violation of:

- Chapter 794, F.S., relating to sexual battery;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 847.0135(5), F.S., relating to prohibited computer transmissions;⁸ or
- A similar law of another jurisdiction.

Section 787.025(3), F.S., provides the following affirmative defenses:

- 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.

¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine of up to \$1,000. Section 775.082 and 775.083, F.S.

² "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. Section 787.025(1)(a), F.S.

³ "Dwelling" means a building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging together therein at night, together with the curtilage thereof. Section 787.025(1)(b), F.S.

⁴ "Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car. Section 787.025(1)(c), F.S.

⁵ Section 787.025(2)(a), F.S.

⁶ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Section 775.082 and 775.083, F.S.

⁷ Section 787.025(2)(b), F.S.

⁸ A person who intentionally masturbates; intentionally exposes the genitals in a lewd or lascivious manner; or intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity live over a computer online service, internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or television monitor by a victim who is less than 16 years of age, commits lewd or lascivious exhibition. Section 847.0135(5), F.S.

Kidnapping

Under s. 787.01(1), F.S., “kidnapping” means forcibly, secretly, or by threat confining,⁹ abducting, or imprisoning another person against his or her will and without lawful authority, with intent to:

- Hold the victim for ransom or reward or as a shield or hostage;
- Commit or facilitate the 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.

A person who kidnaps another person is guilty of a first degree felony,¹⁰ punishable by imprisonment for a term of years not exceeding life.¹¹

A person who kidnaps a child under the age of 13 and who, in the course of committing the kidnapping, also commits one or more of the following, is guilty of a life felony:^{12, 13}

- Aggravated child abuse;¹⁴
- Sexual battery against the child;¹⁵
- Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;¹⁶
- A violation relating to prostitution of the child;¹⁷
- Exploitation of the child or allowing the child to be exploited;¹⁸ or
- A violation relating to human trafficking.¹⁹

False Imprisonment

Section 787.02(2), F.S., prohibits a person from falsely imprisoning²⁰ another person as a third degree felony.

⁹ Confinement of a child under the age of 13 is against his or her will if such confinement is without the consent of his or her parent or legal guardian. Section 787.01(1)(b), F.S.

¹⁰ A first-degree felony is otherwise punishable by up to 30 years’ imprisonment and a fine of \$10,000. ss. 775.082, 775.083, and 775.084, F.S.

¹¹ Section 787.01(2), F.S.

¹² Section 787.01(3)(a), F.S.; The offense is ranked as a Level 10 offense on the offense severity ranking chart (OSRC). Section 921.0022, F.S.

¹³ A life felony is punishable for a term of imprisonment up to life and a \$15,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹⁴ Section 827.03, F.S.

¹⁵ Chapter 794, F.S.

¹⁶ Sections 800.04, F.S., and 847.0135(5), F.S.

¹⁷ Former s. 796.03, F.S., and former s. 796.04, F.S.

¹⁸ Section 450.151, F.S.

¹⁹ Section 787.06(3)(g), F.S.

²⁰ “False imprisonment” means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. Confinement of a child under the age of 13 is against his or her will if such confinement is without the consent of his or her parent or legal guardian. Section 787.02(1), F.S.

A person who falsely imprisons a child under the age of 13 and who, in the course of falsely imprisoning the child, commits any of the following offenses, is guilty of a first degree felony, punishable by imprisonment for a term not exceeding life.²¹

- Aggravated child abuse;²²
- Sexual battery against the child;²³
- Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;²⁴
- A violation relating to prostitution of the child;²⁵
- Exploitation of the child or allowing the child to be exploited;²⁶ or
- A violation relating to human trafficking.²⁷

Interference with Custody

Section 787.03(1), F.S., prohibits a person from knowingly or recklessly taking or enticing, or aiding, abetting, hiring, or otherwise procuring another to take or entice, any minor or any incompetent person from the custody of the minor's or incompetent person's parent, his or her guardian, a public agency having the lawful charge of the minor or incompetent person, or any other lawful custodian without lawful authority. A violation of this prohibition is a third degree felony.²⁸

Additionally, in the absence of a court order determining rights to custody or visitation with any minor or with any incompetent person, any parent of the minor or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of the minor or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that minor or incompetent person within or without the state with malicious intent to deprive another person of his or her right to custody of the minor or incompetent person commits a third degree felony.²⁹

In a prosecution for a violation of s. 787.03, F.S., proof that a person has not attained the age of 18 years creates the presumption that the defendant knew the minor's age or acted in reckless disregard thereof.³⁰

Removing Minors from the State or Concealing Minors Contrary to State Agency Order or Court Order

Section 787.04, F.S., prohibits a person from leading, taking, enticing, or removing a minor beyond the limits of this state, or concealing the location of a minor:

- In violation of a court order that he or she has personal knowledge of;³¹

²¹ Section 787.02(3)(a), F.S.; The offense is ranked as a Level 9 offense on the OSRC.

²² Section 827.03, F.S.

²³ Chapter 794, F.S.

²⁴ Sections 800.04, and 847.0135(5), F.S.

²⁵ Former s. 796.03, F.S., and former s. 796.04, F.S.

²⁶ Section 450.151, F.S.

²⁷ Section 787.06(3)(g), F.S.

²⁸ The offense is ranked as a Level 4 offense on the OSRC.

²⁹ Section 787.03(2), F.S.

³⁰ Section 787.03(5), F.S.

³¹ Section 787.04(1), F.S.; The offense is ranked as a Level 2 offense on the OSRC.

- With criminal intent, during the pendency of any action or proceeding affecting custody of the minor, after having received notice as required by law of the pendency of the action or proceeding, without the permission of the court in which the action or proceeding is pending;³² and
- Knowingly and willfully, during the pendency of a dependency proceeding affecting such minor or during the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of such minor, after having received actual or constructive notice of the pendency of such investigation, action, or proceeding and without the permission of the state agency or court in which the investigation, action, or proceeding is pending.³³

Additionally, a person, who has carried beyond the limits of this state any minor whose custody is involved in any action or proceeding pending in this state pursuant to the order of the court in which the action or proceeding is pending or pursuant to the permission of the court, is prohibited from thereafter failing to produce the minor in the court or deliver the minor to the person designated by the court.³⁴

Any violation of the foregoing provisions in s. 787.04, F.S., is a third degree felony.

Human Trafficking

A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking,³⁵ attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;³⁶
- With or of a child or person believed to be a child younger than 18;³⁷ or
- If for commercial sexual activity, with a mentally defective³⁸ or mentally incapacitated³⁹ person.⁴⁰

Any human trafficking offense committed upon a child younger than 18 years of age or an adult believed by the defendant to be a child younger than 18 years of age for labor or services is punishable as a first degree felony.⁴¹ However, if a child younger than 18 years of age or an adult

³² Section 787.04(2), F.S.; The offense is ranked as a Level 4 offense on the OSRC.

³³ Section 787.04(3), F.S.; The offense is ranked as a Level 4 offense on the OSRC.

³⁴ Section 787.04(4), F.S.

³⁵ “Human trafficking” means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person. S. 787.06(2)(d), F.S.

³⁶ Sections 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.

³⁷ Sections 787.06(3)(a)1., 787.06(3)(c)1., 787.06(3)(e)1., 787.06(3)(f)1., F.S., the offense is ranked as a Level 9 offense on the OSRC; and s. 787.06(3)(g), F.S.

³⁸ “Mentally defective” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. Section 794.011(1)(c), F.S.

³⁹ “Mentally incapacitated” means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. Section 794.011(1)(d), F.S.

⁴⁰ Section 787.06(3)(g), F.S.

⁴¹ Section 787.06(3)(a)1., F.S., the offense is ranked as a Level 8 offense on the OSRC.; s. 787.06(3)(c)1., F.S., the offense is ranked as a Level 9 offense on the OSRC; and s. 787.06(3)(e)1., F.S., the offense is ranked as a Level 8 on the OSRC.

believed by the defendant to be a child younger than 18 years of age, or a person who is mentally defective or mentally incapacitated, is involved in human trafficking for the purposes of commercial sexual activity, the defendant commits a life felony.⁴²

A defendant's ignorance of the victim's age, the victim's misrepresentation of his or her age, or a defendant's bona fide belief of the victim's age cannot be raised as a defense in a prosecution for a human trafficking offense.⁴³

Human Smuggling

Section 787.07, F.S.,⁴⁴ prohibits a person from knowingly and willfully transporting an individual into this state who the person knows, or reasonably should know, has entered the United States illegally from another country. A violation of this prohibition is a third degree felony.⁴⁵ However, a person who transports a minor into this state in violation of this prohibition commits a second degree felony.^{46, 47}

Employing Persons Under the Age of 21 Years in Adult Entertainment Establishments

Section 787.30(2)(a), F.S., prohibits an owner, manager, employee, or contractor of an adult entertainment establishment⁴⁸ from knowingly employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 years to perform or work in an adult entertainment establishment. A violation of this prohibition is a first degree misdemeanor.

This section also prohibits an owner, manager, employee, or contractor of an adult entertainment establishment from knowingly employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 years to perform or work while nude in an adult entertainment establishment. A violation of this prohibition is a second degree felony.⁴⁹

Any owner, manager, employee, or contractor of an adult entertainment establishment who employs a person to perform as an entertainer or work in any capacity in an adult entertainment establishment is required to carefully check a driver license, identification card, passport, or United States Uniformed Services identification card presented by the person and to act in good

⁴² Section 787.06(3)(g), F.S.; The offense is ranked as a Level 10 offense on the OSRC.

⁴³ Section 787.06(9), F.S.

⁴⁴ Section 787.07, F.S., has been preliminarily enjoined by the United States District Court for the Southern District of Florida, based on field and conflict preemption. *Farmworker Ass'n of Fla., Inc. v. Moody*, 734 F. Supp. 3d 1311 (S.D. Fla. 2024).

⁴⁵ Section 787.07(1), F.S.

⁴⁶ Section 787.07(3), F.S.

⁴⁷ A second-degree felony is punishable by up to fifteen years' imprisonment and a fine of \$10,000. Sections. 775.082, 775.083, and 775.084, F.S.

⁴⁸ "Adult entertainment establishment" includes adult bookstores, adult theaters, special cabaret, and unlicensed massage establishments. Section 847.001(2), F.S.

⁴⁹ Section 787.30(2)(b), F.S.

faith and reliance upon such a representation and the appearance of the person in determining that he or she is 21 years of age or older.⁵⁰

A person prosecuted for violating a prohibition related to employing a person under 21 years of age in an adult entertainment establishment may not raise ignorance of another person's age or a person's misrepresentation of his or her age as a defense.⁵¹

Prohibited Computer Usage

Under s. 847.0135(3), F.S., a person commits a third degree felony if he or she knowingly uses a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child⁵² or another person believed by the offender 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 abuse of children, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the offender to be a child; or
- Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed by the offender to be the same, to consent to such child's participation in any act described in ch. 794, F.S., ch. 800, F.S., or ch. 827, F.S., or to otherwise engage in any sexual conduct.⁵³

Criminal Punishment Code

The Criminal Punishment Code⁵⁴ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).⁵⁵ The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- 60 days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- 15 years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.⁵⁶

⁵⁰ Section 787.30(3), F.S.

⁵¹ Section 787.30(4), F.S.

⁵² "Child" means any person, whose identity is known or unknown, younger than 18 years of age. Section 847.001(10), F.S.

⁵³ The offense is ranked as a Level 7 offense on the OSRC.

⁵⁴ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

⁵⁵ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁵⁶ Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.083, F.S., provides the following maximum fines; \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

Offense Severity Ranking Chart

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any non-state prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁵⁷ Absent mitigation,⁵⁸ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁵⁹

Relevant Caselaw

While the general rule is that every crime must include a specific intent, or a mens rea, the Legislature and courts recognize an exception where the state has a compelling interest in protecting underage persons from being sexually abused or exploited. In cases relating to sex offenses or abuse involving minors, a persons ignorance of the age of the victim is not a defense, nor is the misrepresentation of age or a defendant's bona fide⁶⁰ belief that such victim is over the specified age.^{61,62}

⁵⁷ Section 921.0024, F.S., Unless otherwise noted, information on the Code is from this source.

⁵⁸ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁵⁹ If the scored lowest permissible sentence exceeds the maximum penalty in s.775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

⁶⁰ "Bona fide" means being real or genuine, in Latin the word literally means "in good faith." Merriam-Webster, *Law Dictionary*, available at: <https://www.merriam-webster.com/dictionary/bona%20fide#legalDictionary> (last visited March 21, 2025).

⁶¹ *State v. Sorakrai*, 543 So. 2d 294 (Fla. 2d DCA 1989)

⁶² *Grady v. State*, 701 So. 2d 1181 (Fla. 5th DCA 1997)

III. Effect of Proposed Changes:

The bill creates s. 787.001, F.S., to specify that ignorance or misrepresentation of a victim's age is not a defense to certain offenses, when the criminality of conduct depends upon the victim being below a certain age. A bona fide belief that a victim is over a specified age is also not a defense. The bill provides an exception for s. 787.30, F.S., relating to the employment of persons in adult entertainment establishments.

The bill amends s. 787.025, F.S., to increase the age for a child being lured or enticed, and to increase penalties, for a person 18 years of age or older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 14 into or out of a structure, dwelling, conveyance for an unlawful purpose, in the following manner:

- The offense is increased from a first degree misdemeanor to a third degree felony.
- The offense is increased from a third degree felony to a second degree felony, for a second or subsequent offense.
- If the offender has been previously convicted of a violation of ch.794, F.S., ss. 800.04, or 847.0135(5), F.S., or a violation of a similar law of another jurisdiction, the offense is increased from a third degree felony to a second degree felony.

The bill amends s. 921.022, F.S., to rank the specified offenses on the offense severity ranking chart of the Criminal Punishment Code as a Level 7.

The bill takes effect October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require the cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s.18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has provided a preliminary estimate that the bill may have a positive indeterminate prison bed impact on the DOC. The EDR provides that while current offender numbers are low, it is not known how increasing the age threshold to 14 years old as well as felony levels and degrees might expand the potential offender pool.

Per the Florida Department of Law Enforcement, in FY 23-24, there were four misdemeanor arrests and no felony arrests for luring or enticing a child under the age of 12 into a structure, with three misdemeanor guilty/conviction charges and no adjudication withheld charges. There were no guilty/convicted charges or adjudication withheld charges for felonies. Per the DOC, there were no new commitments to prison in FY 23-24 for violations of s. 787.025.⁶³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 787.025 and 921.0022.

This bill creates section 787.001 of the Florida Statutes.

⁶³ Office of Economic and Demographic Research CS/SB 1136 – Age as an Element of a Criminal Offense, (on file with the Senate Appropriations Committee on Criminal and Civil Justice).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Criminal and Civil Justice on April 15, 2025:

The committee substitute increases the penalties for a person 18 years and older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 14 into or out of a structure, dwelling, or conveyance for unlawful purposes.

CS by Criminal Justice on March 25, 2025:

The committee substitute:

- Increases the age of a child being enticed or lured into a structure from 12 to 16.
- Revises the affirmative defense provided to incorporate the increase in age for a child.

- B. **Amendments:**

None.