

By Senator Dyer

14-627A-99

1                                   A bill to be entitled  
2           An act relating to criminal offenses; amending  
3           s. 775.085, F.S.; providing enhanced penalties  
4           for offenses committed against a child or an  
5           older adult; deleting provisions that limit the  
6           imposition of enhanced penalties for an offense  
7           against an older adult to those offenses that  
8           evidence prejudice based on the victim's  
9           advanced age; amending s. 777.04, F.S.;  
10          providing that it is a second-degree felony to  
11          solicit a minor to commit an offense prohibited  
12          by law; specifying elements of the offense;  
13          providing for ranking the offense for purposes  
14          of sentencing under the sentencing guidelines;  
15          requiring that a sentence of imprisonment  
16          imposed for the offense of soliciting a minor  
17          be served consecutively to any other sentence  
18          imposed for an offense committed during the  
19          course of the same criminal transaction;  
20          amending s. 921.0022, F.S., relating to the  
21          offense severity ranking chart; providing for  
22          ranking the offense of soliciting a minor to  
23          commit an offense prohibited by law; providing  
24          an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

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28           Section 1. Section 775.085, Florida Statutes, 1998  
29 Supplement, is amended to read:

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1           775.085 Offense committed against a child or older  
2 adult;evidencing prejudice while committing offense; enhanced  
3 penalties.--

4           (1)(a) The penalty for any felony or misdemeanor shall  
5 be reclassified as provided in this subsection if the victim  
6 of the felony or misdemeanor is a minor under 16 years of age  
7 or a person 65 years of age or older or if the commission of  
8 such felony or misdemeanor evidences prejudice based on the  
9 race, color, ancestry, ethnicity, religion, sexual  
10 orientation, national origin, or mental or physical  
11 disability,~~or advanced age~~ of the victim:

12           1. A misdemeanor of the second degree shall be  
13 punishable as if it were a misdemeanor of the first degree.

14           2. A misdemeanor of the first degree shall be  
15 punishable as if it were a felony of the third degree.

16           3. A felony of the third degree shall be punishable as  
17 if it were a felony of the second degree.

18           4. A felony of the second degree shall be punishable  
19 as if it were a felony of the first degree.

20           5. A felony of the first degree shall be punishable as  
21 if it were a life felony.

22           (b) As used in paragraph (a), the term~~+~~

23           ~~1.~~ "mental or physical disability" means that the  
24 victim suffers from a condition of physical or mental  
25 incapacitation due to a developmental disability, organic  
26 brain damage, or mental illness, and has one or more physical  
27 or mental limitations that restrict the victim's ability to  
28 perform the normal activities of daily living.

29           ~~2.~~ "Advanced age" means that the victim is older than  
30 ~~65 years of age.~~

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1           (2) A person or organization that establishes by clear  
2 and convincing evidence that it has been coerced, intimidated,  
3 or threatened in violation of this section has a civil cause  
4 of action for treble damages, an injunction, or any other  
5 appropriate relief in law or in equity. Upon prevailing in  
6 such civil action, the plaintiff may recover reasonable  
7 attorney's fees and costs.

8           (3) It is an essential element of a violation of this  
9 section that the record reflect that the defendant perceived,  
10 knew, or had reasonable grounds to know or perceive that the  
11 victim was within the class or age group delineated in this  
12 section.

13           Section 2. Subsections (2) and (4) of section 777.04,  
14 Florida Statutes, as amended by section 17 of chapter 97-194,  
15 Laws of Florida, are amended to read:

16           777.04 Attempts, solicitation, and conspiracy.--

17           (2)(a) A person who solicits another to commit an  
18 offense prohibited by law and, in the course of such  
19 solicitation, commands, encourages, hires, or requests another  
20 person to engage in specific conduct that constitutes which  
21 ~~would constitute~~ such offense or an attempt to commit such  
22 offense, commits the offense of criminal solicitation, ranked  
23 for purposes of sentencing as provided in subsection (4).

24           (b) Notwithstanding paragraph (a), it is a felony of  
25 the second degree for a person to solicit a minor to commit an  
26 offense prohibited by law and, in the course of such  
27 solicitation, to command, encourage, hire, or request the  
28 minor to engage in specific conduct that constitutes an  
29 offense prohibited by law or an attempt to commit an offense  
30 prohibited by law. For purposes of sentencing under chapter  
31 921, the offense of solicitation of a minor shall be ranked at

1 level 7 under the sentencing guidelines, unless the offense  
2 solicited is ranked in level 8 or level 9, in which case the  
3 offense shall be ranked at one level below the ranking of the  
4 offense solicited. A sentence of imprisonment imposed for the  
5 offense of solicitation of a minor shall be served  
6 consecutively to any other sentence imposed for an offense  
7 committed during the course of the same criminal transaction  
8 or episode.

9           (4)(a) Except as otherwise provided in ss. 828.125(2),  
10 849.25(4), 893.135(5), and 921.0022, the offense of criminal  
11 attempt, criminal solicitation, or criminal conspiracy is  
12 ranked, for purposes of sentencing under chapter 921 and  
13 determining incentive gain-time eligibility under chapter 944,  
14 one level below the ranking under s. 921.0022 or s. 921.0023  
15 of the offense attempted, solicited, or conspired to. If the  
16 criminal attempt, criminal solicitation, or criminal  
17 conspiracy is of an offense ranked in level 1 or level 2 under  
18 s. 921.0022 or s. 921.0023, such offense is a misdemeanor of  
19 the first degree, punishable as provided in s. 775.082 or s.  
20 775.083.

21           (b) If the offense attempted, solicited, or conspired  
22 to is a capital felony, the offense of criminal attempt,  
23 criminal solicitation, or criminal conspiracy is a felony of  
24 the first degree, punishable as provided in s. 775.082, s.  
25 775.083, or s. 775.084.

26           (c) Except as otherwise provided in s. 893.135(5), if  
27 the offense attempted, solicited, or conspired to is a life  
28 felony or a felony of the first degree, the offense of  
29 criminal attempt, criminal solicitation, or criminal  
30 conspiracy is a felony of the second degree, punishable as  
31 provided in s. 775.082, s. 775.083, or s. 775.084.

1 (d) Except as otherwise provided in s. 828.125(2) or  
2 s. 849.25(4), if the offense attempted, solicited, or  
3 conspired to is a:

- 4 1. Felony of the second degree;
- 5 2. Burglary that is a felony of the third degree; or
- 6 3. Felony of the third degree ranked in level 3, 4, 5,  
7 6, 7, 8, 9, or 10 under s. 921.0022 or s. 921.0023,

8  
9 the offense of criminal attempt, criminal solicitation, or  
10 criminal conspiracy is a felony of the third degree,  
11 punishable as provided in s. 775.082, s. 775.083, or s.  
12 775.084.

13 (e) Except as otherwise provided in s. 849.25(4) or  
14 paragraph (d), if the offense attempted, solicited, or  
15 conspired to is a felony of the third degree, the offense of  
16 criminal attempt, criminal solicitation, or criminal  
17 conspiracy is a misdemeanor of the first degree, punishable as  
18 provided in s. 775.082 or s. 775.083.

19 (f) If the offense attempted, solicited, or conspired  
20 to is a misdemeanor of the first or second degree, the offense  
21 of criminal attempt, criminal solicitation, or criminal  
22 conspiracy is a misdemeanor of the second degree, punishable  
23 as provided in s. 775.082 or s. 775.083.

24 Section 3. Paragraphs (g), (h), and (i) of subsection  
25 (3) of section 921.0022, Florida Statutes, 1998 Supplement,  
26 are amended to read:

27 921.0022 Criminal Punishment Code; offense severity  
28 ranking chart.--

29 (3) OFFENSE SEVERITY RANKING CHART  
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1	Florida	Felony	
2	Statute	Degree	Description
3			
4			
5			(g) LEVEL 7
6	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
7			injury.
8	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
9			bodily injury.
10	409.920(2)	3rd	Medicaid provider fraud.
11	494.0018(2)	1st	Conviction of any violation of
12			ss. 494.001-494.0077 in which the
13			total money and property
14			unlawfully obtained exceeded
15			\$50,000 and there were five or
16			more victims.
17	<u>777.04(2)(b)</u>	<u>2nd</u>	<u>Soliciting a minor to commit an</u>
18			<u>offense ranked at level 7 or</u>
19			<u>lower.</u>
20	782.051(3)	2nd	Attempted felony murder of a
21			person by a person other than the
22			perpetrator or the perpetrator of
23			an attempted felony.
24	782.07(1)	2nd	Killing of a human being by the
25			act, procurement, or culpable
26			negligence of another
27			(manslaughter).
28	782.071	3rd	Killing of human being or viable
29			fetus by the operation of a motor
30			vehicle in a reckless manner
31			(vehicular homicide).

1	782.072	3rd	Killing of a human being by the
2			operation of a vessel in a
3			reckless manner (vessel
4			homicide).
5	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
6			causing great bodily harm or
7			disfigurement.
8	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
9			weapon.
10	784.045(1)(b)	2nd	Aggravated battery; perpetrator
11			aware victim pregnant.
12	784.048(4)	3rd	Aggravated stalking; violation of
13			injunction or court order.
14	784.07(2)(d)	1st	Aggravated battery on law
15			enforcement officer.
16	784.08(2)(a)	1st	Aggravated battery on a person 65
17			years of age or older.
18	784.081(1)	1st	Aggravated battery on specified
19			official or employee.
20	784.082(1)	1st	Aggravated battery by detained
21			person on visitor or other
22			detainee.
23	784.083(1)	1st	Aggravated battery on code
24			inspector.
25	790.07(4)	1st	Specified weapons violation
26			subsequent to previous conviction
27			of s. 790.07(1) or (2).
28	790.16(1)	1st	Discharge of a machine gun under
29			specified circumstances.
30	796.03	2nd	Procuring any person under 16
31			years for prostitution.

1	800.04	2nd	Handle, fondle, or assault child
2			under 16 years in lewd,
3			lascivious, or indecent manner.
4	806.01(2)	2nd	Maliciously damage structure by
5			fire or explosive.
6	810.02(3)(a)	2nd	Burglary of occupied dwelling;
7			unarmed; no assault or battery.
8	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
9			unarmed; no assault or battery.
10	810.02(3)(d)	2nd	Burglary of occupied conveyance;
11			unarmed; no assault or battery.
12	812.014(2)(a)	1st	Property stolen, valued at
13			\$100,000 or more; property stolen
14			while causing other property
15			damage; 1st degree grand theft.
16	812.019(2)	1st	Stolen property; initiates,
17			organizes, plans, etc., the theft
18			of property and traffics in
19			stolen property.
20	812.133(2)(b)	1st	Carjacking; no firearm, deadly
21			weapon, or other weapon.
22	825.102(3)(b)	2nd	Neglecting an elderly person or
23			disabled adult causing great
24			bodily harm, disability, or
25			disfigurement.
26	825.1025(2)	2nd	Lewd or lascivious battery upon
27			an elderly person or disabled
28			adult.
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1	825.103(2)(b)	2nd	Exploiting an elderly person or
2			disabled adult and property is
3			valued at \$20,000 or more, but
4			less than \$100,000.
5	827.03(3)(b)	2nd	Neglect of a child causing great
6			bodily harm, disability, or
7			disfigurement.
8	827.04(4)	3rd	Impregnation of a child under 16
9			years of age by person 21 years
10			of age or older.
11	837.05(2)	3rd	Giving false information about
12			alleged capital felony to a law
13			enforcement officer.
14	872.06	2nd	Abuse of a dead human body.
15	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
16			cocaine (or other drug prohibited
17			under s. 893.03(1)(a), (1)(b),
18			(1)(d), (2)(a), or (2)(b)) within
19			1,000 feet of a child care
20			facility or school.
21	893.13(1)(e)	1st	Sell, manufacture, or deliver
22			cocaine or other drug prohibited
23			under s. 893.03(1)(a), (1)(b),
24			(1)(d), (2)(a), or (2)(b), within
25			1,000 feet of property used for
26			religious services or a specified
27			business site.
28	893.13(4)(a)	1st	Deliver to minor cocaine (or
29			other s. 893.03(1)(a), (1)(b),
30			(1)(d), (2)(a), or (2)(b) drugs).
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1	893.135(1)(a)1.	1st	Trafficking in cannabis, more
2			than 50 lbs., less than 2,000
3			lbs.
4	893.135		
5	(1)(b)1.a.	1st	Trafficking in cocaine, more than
6			28 grams, less than 200 grams.
7	893.135		
8	(1)(c)1.a.	1st	Trafficking in illegal drugs,
9			more than 4 grams, less than 14
10			grams.
11	893.135		
12	(1)(d)1.	1st	Trafficking in phencyclidine,
13			more than 28 grams, less than 200
14			grams.
15	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
16			than 200 grams, less than 5
17			kilograms.
18	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
19			than 14 grams, less than 28
20			grams.
21	893.135		
22	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
23			grams or more, less than 14
24			grams.
25			(h) LEVEL 8
26	316.193		
27	(3)(c)3.a.	2nd	DUI manslaughter.
28	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
29	777.03(2)(a)	1st	Accessory after the fact, capital
30			felony.
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1	<u>777.04(2)(b)</u>	<u>2nd</u>	<u>Soliciting a minor to commit an</u>
2			<u>offense ranked at level 9.</u>
3	782.04(4)	2nd	Killing of human without design
4			when engaged in act or attempt of
5			any felony other than arson,
6			sexual battery, robbery,
7			burglary, kidnapping, aircraft
8			piracy, or unlawfully discharging
9			bomb.
10	782.051(2)	1st	Attempted felony murder while
11			perpetrating or attempting to
12			perpetrate a felony not
13			enumerated in s. 782.04(3).
14	782.071(2)	2nd	Committing vehicular homicide and
15			failing to render aid or give
16			information.
17	782.072(2)	2nd	Committing vessel homicide and
18			failing to render aid or give
19			information.
20	790.161(3)	1st	Discharging a destructive device
21			which results in bodily harm or
22			property damage.
23	794.011(5)	2nd	Sexual battery, victim 12 years
24			or over, offender does not use
25			physical force likely to cause
26			serious injury.
27	806.01(1)	1st	Maliciously damage dwelling or
28			structure by fire or explosive,
29			believing person in structure.
30	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
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1	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
2			or dangerous weapon.
3	810.02(2)(c)	1st	Burglary of a dwelling or
4			structure causing structural
5			damage or \$1,000 or more property
6			damage.
7	812.13(2)(b)	1st	Robbery with a weapon.
8	812.135(2)	1st	Home-invasion robbery.
9	825.102(2)	2nd	Aggravated abuse of an elderly
10			person or disabled adult.
11	825.103(2)(a)	1st	Exploiting an elderly person or
12			disabled adult and property is
13			valued at \$100,000 or more.
14	827.03(2)	2nd	Aggravated child abuse.
15	837.02(2)	2nd	Perjury in official proceedings
16			relating to prosecution of a
17			capital felony.
18	837.021(2)	2nd	Making contradictory statements
19			in official proceedings relating
20			to prosecution of a capital
21			felony.
22	860.121(2)(c)	1st	Shooting at or throwing any
23			object in path of railroad
24			vehicle resulting in great bodily
25			harm.
26	860.16	1st	Aircraft piracy.
27	893.13(1)(b)	1st	Sell or deliver in excess of 10
28			grams of any substance specified
29			in s. 893.03(1)(a) or (b).
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1	893.13(2)(b)	1st	Purchase in excess of 10 grams of
2			any substance specified in s.
3			893.03(1)(a) or (b).
4	893.13(6)(c)	1st	Possess in excess of 10 grams of
5			any substance specified in s.
6			893.03(1)(a) or (b).
7	893.135(1)(a)2.	1st	Trafficking in cannabis, more
8			than 2,000 lbs., less than 10,000
9			lbs.
10	893.135		
11	(1)(b)1.b.	1st	Trafficking in cocaine, more than
12			200 grams, less than 400 grams.
13	893.135		
14	(1)(c)1.b.	1st	Trafficking in illegal drugs,
15			more than 14 grams, less than 28
16			grams.
17	893.135		
18	(1)(d)1.b.	1st	Trafficking in phencyclidine,
19			more than 200 grams, less than
20			400 grams.
21	893.135		
22	(1)(e)1.b.	1st	Trafficking in methaqualone, more
23			than 5 kilograms, less than 25
24			kilograms.
25	893.135		
26	(1)(f)1.b.	1st	Trafficking in amphetamine, more
27			than 28 grams, less than 200
28			grams.
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1	893.135		
2	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
3			grams or more, less than 28
4			grams.
5	895.03(1)	1st	Use or invest proceeds derived
6			from pattern of racketeering
7			activity.
8	895.03(2)	1st	Acquire or maintain through
9			racketeering activity any
10			interest in or control of any
11			enterprise or real property.
12	895.03(3)	1st	Conduct or participate in any
13			enterprise through pattern of
14			racketeering activity.
15			(i) LEVEL 9
16	316.193		
17	(3)(c)3.b.	1st	DUI manslaughter; failing to
18			render aid or give information.
19	<u>777.04(2)(b)</u>	<u>2nd</u>	<u>Soliciting a minor to commit an</u>
20			<u>offense ranked at level 10.</u>
21	782.04(1)	1st	Attempt, conspire, or solicit to
22			commit premeditated murder.
23	782.04(3)	1st,PBL	Accomplice to murder in
24			connection with arson, sexual
25			battery, robbery, burglary, and
26			other specified felonies.
27	782.051(1)	1st	Attempted felony murder while
28			perpetrating or attempting to
29			perpetrate a felony enumerated in
30			s. 782.04(3).
31			

1	782.07(2)	1st	Aggravated manslaughter of an
2			elderly person or disabled adult.
3	782.07(3)	1st	Aggravated manslaughter of a
4			child.
5	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
6			reward or as a shield or hostage.
7	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
8			or facilitate commission of any
9			felony.
10	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
11			interfere with performance of any
12			governmental or political
13			function.
14	787.02(3)(a)	1st	False imprisonment; child under
15			age 13; perpetrator also commits
16			child abuse, sexual battery,
17			lewd, or lascivious act, etc.
18	790.161	1st	Attempted capital destructive
19			device offense.
20	794.011(2)	1st	Attempted sexual battery; victim
21			less than 12 years of age.
22	794.011(2)	Life	Sexual battery; offender younger
23			than 18 years and commits sexual
24			battery on a person less than 12
25			years.
26	794.011(4)	1st	Sexual battery; victim 12 years
27			or older, certain circumstances.
28	794.011(8)(b)	1st	Sexual battery; engage in sexual
29			conduct with minor 12 to 18 years
30			by person in familial or
31			custodial authority.

1	812.13(2)(a)	1st,PBL	Robbery with firearm or other
2			deadly weapon.
3	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
4			deadly weapon.
5	847.0145(1)	1st	Selling, or otherwise
6			transferring custody or control,
7			of a minor.
8	847.0145(2)	1st	Purchasing, or otherwise
9			obtaining custody or control, of
10			a minor.
11	859.01	1st	Poisoning food, drink, medicine,
12			or water with intent to kill or
13			injure another person.
14	893.135	1st	Attempted capital trafficking
15			offense.
16	893.135(1)(a)3.	1st	Trafficking in cannabis, more
17			than 10,000 lbs.
18	893.135		
19	(1)(b)1.c.	1st	Trafficking in cocaine, more than
20			400 grams, less than 150
21			kilograms.
22	893.135		
23	(1)(c)1.c.	1st	Trafficking in illegal drugs,
24			more than 28 grams, less than 30
25			kilograms.
26	893.135		
27	(1)(d)1.c.	1st	Trafficking in phencyclidine,
28			more than 400 grams.
29	893.135		
30	(1)(e)1.c.	1st	Trafficking in methaqualone, more
31			than 25 kilograms.



1 893.135

2 (1)(f)1.c. 1st Trafficking in amphetamine, more  
3 than 200 grams.

4 Section 4. This act shall take effect October 1, 1999.

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SENATE SUMMARY

8 Requires that the penalty imposed for a felony or  
9 misdemeanor be reclassified to a more severe penalty if  
10 the victim of the offense is a child under 16 years of  
11 age or an adult 65 years of age or older. Provides that  
12 it is a second-degree felony for a person to solicit a  
13 minor to commit an offense and, in the course of the  
14 solicitation, to command, encourage, hire, or request the  
15 minor to engage in conduct that is an offense prohibited  
16 by law or is an attempt to commit an offense prohibited  
17 by law. Provides that the offense of soliciting a minor  
18 to commit an offense is ranked at level 7 in the  
19 sentencing guidelines, except that, if the offense  
20 solicited is ranked in level 9 or level 10, soliciting a  
21 minor is ranked at one level below the ranking of the  
22 offense solicited. Requires that a sentence of  
23 imprisonment imposed for soliciting a minor to commit an  
24 offense be served consecutively to any other sentence  
25 imposed for an offense committed during the same criminal  
26 episode.

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