

**STORAGE NAME:** h1317.cpcs.doc  
**DATE:** February 9, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
ANALYSIS**

**BILL #:** HB 1317  
**RELATING TO:** Offenses Against Children  
**SPONSOR(S):** Representative Cusack

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
  - (2) HEALTHY COMMUNITIES
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 1317 amends the statute relating to lewd and lascivious offenses committed in the presence of a child to provide a definition of the term "presence". The bill also amends the statute relating to conditional release which prohibits an offender on conditional release from living within 1000 feet of certain locations to include a prohibition against living within 1000 feet of a school bus stop. The bill also creates a new section of statute which provides that it is unlawful for any person who has been convicted of a sexual offense against a victim under the age 16 from residing within 1,000 feet of a school, day care center, park or playground.

**The sponsor has indicated to committee staff that the current language in the bill was inadvertently filed and that the sponsor intends to offer a strike everything amendment which will substantially change the provisions of the bill. It is expected that the strike everything amendment will provide the following:**

- The kidnapping statute provides for enhanced penalties if the victim is under the age of 13. The amendment will provide for enhanced penalties for kidnapping a child under the age of 15. The amendment will make corresponding changes to the false imprisonment statute.
- The amendment will amend the statute relating to luring or enticing a child to raise the age of the children protected under the statute from those under the age of 12 to those under the age of 15.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Kidnapping**

Section 787.01 prohibits the offense of kidnapping, a first degree felony, which is defined as follows:

The term kidnapping means forcibly, secretly or by threat confining, abducting or imprisoning another person against her or his will and without lawful authority, with intent to:

1. Hold for ransom or reward or as a shield or hostage.
2. Commit or facilitate the commission of a felony.
3. Inflict bodily harm upon or terrorize the victim or another person.
4. Interfere with the performance of any governmental or political function.

Confinement of a child under the age of 13 is against her or his will within the meaning of this subsection if such confinement is without the consent of her or his parent or legal guardian.

The section also provides for enhanced penalties for kidnapping of a child which is defined as follows:

A person who commits the offense of kidnapping upon a child under the age of 13 and who, in the course of committing the offense, commits one or more of the following:

1. Aggravated child abuse, as defined in s. 827.03.
2. Sexual battery, as defined in chapter 794, against the child.
3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04.
4. A violation of s. 796.03 or 796.04, relating to prostitution.

5. Exploitation of the child or allowing the child to be exploited in violation of s. 450.151.

commits a life felony.

### **False Imprisonment**

False imprisonment is defined as “forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.” The section provides that the confinement of a child under the age of 13 is considered against her or his will if the confinement is without the consent of the victim’s parent or legal guardian. The section also provides for enhanced penalties for aggravated false imprisonment if it is committed on a child under the age of 13 and in the course of offense, the offender commits one of the following offenses:

1. Aggravated child abuse, as defined in s. 827.03.
2. Sexual battery, as defined in chapter 794, against the child.
3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04.
4. A violation of s. 796.03 or 796.04, relating to prostitution.
5. Exploitation of the child or allowing the child to be exploited in violation of s. 450.151.

### **Luring or Enticing a Child**

Section 787.025, F.S., provides that a person over the age of 18 who, having been previously convicted of a sexual offense under Chapter 794 or s. 800.04, F.S., or of a similar offense in another jurisdiction, intentionally lures or entices a child under the age of 12 into a structure<sup>1</sup>, dwelling<sup>2</sup>, or conveyance<sup>3</sup> for other than a lawful purpose commits a third degree felony.

The section further provides that the 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 shall be prima facie evidence of other than a lawful purpose. The section also provides that it is an affirmative defense to a prosecution for this offense that:

1. the person reasonably believed that his or her action was necessary to prevent the child from being seriously injured;
2. 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 or

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<sup>1</sup> The term “structure” is defined as “a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.” Sec. 787.025(1)(a), F.S.

<sup>2</sup> The term “dwelling” is defined as 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.” Sec. 787.025(1)(b), F.S.

<sup>3</sup> The term “conveyance” is defined as any motor vehicle, ship, vessel, railroad car, trailer, aircraft or sleeping car”. Sec. 787.025(1)(c), F.S.

3. 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.

"An 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question." State v. Cohen, 568 So.2d 49, 51 (Fla.1990). A defendant has the burden of initially offering evidence to establish an affirmative defense, after which the burden shifts to the state to disprove the defense beyond a reasonable doubt. Hansman v. State, 679 So.2d 1216, 1217 (Fla. 4<sup>th</sup> DCA 1996).

In Brake v. State, 746 So. 2d 527 (Fla. 2<sup>nd</sup> DCA 1999), the Second District Court of Appeal found s. 787.025, F.S., to be unconstitutionally vague. The Court found that the term "other than for a lawful purpose" failed to give "persons of common intelligence adequate warning of the proscribed conduct". The court noted that one way that the legislature could cure this problem is by "leaving out the offending language and making it illegal for a convicted sex offender over the age of eighteen....to lure or entice a child under twelve into a structure, dwelling, or conveyance without the permission of a parent or guardian." Id. at 529-530.

The Florida Supreme Court overturned the Second District and ruled that the statute is not unconstitutional. The court ruled that the statute can be construed to require that the state prove "that the defendant lured or enticed a child into the structure, dwelling or conveyance for an 'illegal' purpose, i.e. with intent to violate Florida law by committing a crime." State v. Brake, 796 So.2d 522 (Fla. 2001).

#### C. EFFECT OF PROPOSED CHANGES:

**The sponsor has indicated to committee staff that the current language in the bill was inadvertently filed and that the sponsor intends to file a strike everything amendment which will substantially change the provisions of the bill. For contents of strike everything amendment, see Amendment section of bill analysis. The following is an analysis of the bill.**

The bill amends section 787.025 relating to luring or enticing a child to raise the age of the children being protected from children under the age of 13 to children under the age of 15.

Section 800.04 prohibits specified lewd or lascivious acts from being committed in the "presence" of a child. The bill provides a definition of the term "presence" as follows:

"Presence" means that the victim of an act in violation of this section is physically present where and when the act occurs. The term does not mean that the victim must actually see or have sensory awareness of the act.

The bill also amends the statute relating to conditional release which prohibits an offender on conditional release from living within 1000 feet of certain locations<sup>4</sup> to include a prohibition against living within 1000 feet of a school bus stop.

The bill also creates a new section of statute which provides that it is unlawful for any person who has been convicted of a sexual offense against a victim under the age 16 from residing within 1,000 feet of a school, day care center, park or playground. The bill provides that the offense is a third degree felony if the offender's prior conviction was for a sexual offense that was a first degree felony. The offense is a first degree misdemeanor if the offender's prior conviction was for a sexual

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<sup>4</sup> s.947.1405, F.S.

offense that was a second or third degree felony. The bill creates two separate sections of statute, one that applies to any person who is convicted of the prior sexual offense against a child on or after October 1, 2002 and one which applies to any person who has ever been convicted of a prior sexual offense against a child.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has indicated that the provisions of the strike-everything amendment will have an insignificant prison bed impact on the Department of Corrections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

It is expected that the sponsor will offer a strike-everything amendment which will substantially differ from the original bill. The amendment will not contain the provisions relating to the definition of the term "presence" in s. 800.04, the provisions relating to an offender on conditional release or the provisions prohibiting a person who has previously been convicted of a sex offense from living within 1,000 feet of certain locations.

The amendment will amend section 787.025 relating to luring or enticing a child to raise the age of the children protected from those under the age of 12 to children under the age of 15.

The kidnapping statute provides for enhanced penalties if the victim is under the age of 13. The amendment will provide for enhanced penalties for a child under the age of 15. The amendment will make corresponding changes to the false imprisonment statute.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

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Trina Kramer

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