

# 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.)

BILL: CS/SB 218  
SPONSOR: Criminal Justice Committee and Senator Crist  
SUBJECT: Crimes Against Minors  
DATE: December 11, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for SB 218 makes it a life felony to kidnap a child under the age of 16 when one or more statutorily-specified offenses are committed in the course of committing the kidnapping. Current law also punishes this act as a life felony, but the kidnapped child must be under the age of 13.

This CS also makes it a first degree felony punishable by a term of years not exceeding life (PBL) to falsely imprison a child under the age of 16 when one or more statutorily-specified offenses are committed in the course of committing the false imprisonment. Current law also punishes this act as a first degree felony (PBL), but the falsely imprisoned child must be under the age of 13.

This CS also makes it a second degree felony for a person to commit the offense of luring. 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 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 16 into a structure, dwelling, or conveyance for other than a lawful purpose. Current law punishes this same act as a third degree felony and the lured child must be under the age of 12.

This CS also amends a current provision of the luring statute, which the Florida Supreme Court has held creates an impermissible presumption. As amended, the provision provides that luring or attempted luring of the child without the consent of the child's parent or legal guardian may be considered with other competent evidence in determining whether the luring or attempted luring was done for other than a lawful purpose.

This CS substantially amends ss. 787.01, 787.02 and 787.025, F.S. This CS reenacts and amends provisions of s. 921.0022, F.S., and also reenacts the following sections or provisions of those sections of the Florida Statutes: 435.03; 435.04; 775.21; 903.133; 910.14; 943.0435; 943.0585; 943.059; 944.606; 944.607; 948.01; and 948.06.

## **II. Present Situation:**

### **A. Kidnapping a Child under the Age of 13**

Section 787.01(2), F.S., provides that it is a first degree felony punishable by imprisonment for a term of years not exceeding life for a person to kidnap another person. However, under s. 787.01(3), F.S., it is a life felony for a person to kidnap a child under the age of 13, if any of the following offenses are committed in the course of committing the kidnapping:

- Aggravated child abuse, as defined in s. 827.03, F.S.
- Sexual battery, as defined in ch. 794, F.S., against the child.
- Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04, F.S.
- A violation of s. 796.03, F.S., or s. 796.04, F.S., relating to prostitution upon the child.
- Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151, F.S.

The life felony for kidnapping is ranked in Level 10 of the offense severity ranking chart of the Criminal Punishment Code.

Section 787.01(1), F.S., defines the term “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to hold for ransom or reward or as a shield or hostage, commit or facilitate 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. Confinement of a child under the age of 13 is against the child’s will within the meaning of subsection (1) if that confinement is without the consent of the child’s parent or legal guardian.

### **B. False Imprisonment of a Child under the Age of 13**

Section 787.02(2), F.S., provides that it is a third degree felony for a person to commit false imprisonment. However, under s. 787.01(3), F.S., it is a first degree felony for a person to falsely imprison a child under the age of 13 if any of the same type of offenses previously described (regarding kidnapping of a child under age 13) is committed in the course of committing the false imprisonment.

The first degree felony for false imprisonment is a Level 9 offense.

Section 787.02(1), F.S., defines the term “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will. Confinement of a child under the age of 13 is against the child’s will within the meaning of s. 787.02, F.S., if that confinement is without the consent of the child’s parent or legal guardian.

### C. Luring

Section 787.025(2)(a), F.S., provides that it is a third degree felony to commit the offense of luring. 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 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.” *State v. Brake*, 796 So.2d 522, 529 (Fla. 2001).

While the Court in *Brake* upheld the constitutionality 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:

[T]he statute permits the State to prove the mens rea element of the offense (“for other than a lawful purpose”) by proving lack of parental consent for the child to enter the structure, dwelling or conveyance with the defendant. We cannot say with substantial assurance that a defendant’s unlawful intent can be so presumed. For example, a neighbor who invited a child into their house for a perfectly innocent reason is not likely to seek parental permission. Thus, section 787.025(2)(b) must be deleted as an unconstitutional statutory presumption.

*Id.* at 529.

To date, the provision struck down by the Court in *Brake* remains in the law.

Luring is an unranked offense. Pursuant to s. 921.0023, F.S., an unranked third degree felony defaults to Level 1.

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.

### III. Effect of Proposed Changes:

Committee Substitute for SB 218:

- Amends s. 787.01, F.S., to make it a life felony to kidnap a child under the age of 16 when one or more statutorily-specified offenses are committed in the course of committing the kidnapping. Current law also punishes this act as a life felony, but the kidnapped child must be under the age of 13.
- Amends s. 787.02, F.S., to make it a first degree felony punishable by a term of years not exceeding life (PBL) to falsely imprison a child under the age of 16 when one or more statutorily-specified offenses are committed in the course of committing the false imprisonment. Current law also punishes this act as a first degree felony (PBL), but the falsely imprisoned child must be under the age of 13.
- Amends s. 787.02, F.S., to make it a second degree felony for a person to commit the offense of luring. 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 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 16 into a structure, dwelling, or conveyance for other than a lawful purpose. Current law punishes this same act as a third degree felony and the lured child must be under the age of 12.

Luring is an unranked offense. Pursuant to s. 921.0023, F.S., an unranked second degree felony defaults to Level 4.

- Amends a current provision of the luring statute, which the Florida Supreme Court has held creates an impermissible presumption. As amended, the provision provides that luring or attempted luring of the child without the consent of the child's parent or legal guardian may be considered with other competent evidence in determining whether the luring or attempted luring was done for other than a lawful purpose.
- Reenacts and amends s. 921.0022(3)(f), (i), and (j), F.S., relating to the offense severity ranking chart of the Criminal Punishment Code to incorporate the amendments to s. 787.02, F.S., in reference thereto and to conform provisions to other changes made by the CS.
- Reenacts ss. 435.03(2)(j) and (k), 435.04(2)(k) and (l), 775.21(4), 903.133, and 910.14, F.S., relating respectively to screening standards, the Florida Sexual Predator Act, bail on appeal, and kidnapping, to incorporate the amendments to ss. 787.01, 787.02, and 787.025, F.S., in reference thereto.
- Reenacts ss. 943.0435(1)(a), 943.0585, 943.059, 944.606(1)(b), 944.607(1)(a), 948.01(15), and 948.06(2)(a), F.S., relating respectively to sexual offender registration, sealing and expunction, definition of the term "sexual offender," and probation and community control, to incorporate the amendments to ss. 787.01, 787.02, and 787.025, F.S., in reference thereto.
- Takes effect October 1, 2004.

**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 Criminal Justice Impact Conference (CJIC) has not yet met to consider CS/SB 218, so a CJIC estimate is not currently available. The penalty provisions (and changes to age elements) in the CS are similar to CS/HB 63 from the 2003 Legislative Session, which was estimated by the CJIC as likely to have an insignificant prison bed impact. The Economic and Demographic Research Division reviewed SB 218 (the penalty provisions of which were not changed in the CS) using more sentencing data not available when CS/HB 63 was reviewed by the CJIC. It appears likely that the CS, like CS/HB 63, will have an insignificant impact, but this is a preliminary estimate, not a CJIC estimate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.