

Bill No. SB 640

Barcode 430134

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Campbell) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 787.025, Florida Statutes, is amended to read:

787.025 Luring or enticing a child.--

(1) As used in this section, the term:

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

(b) "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.

(c) "Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.

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1 (d) "Convicted" means a determination of guilt which
 2 is the result of a trial or the entry of a plea of guilty or
 3 nolo contendere, regardless of whether adjudication is
 4 withheld.

5 (2)(a) A person 18 years of age or over who
 6 intentionally lures or entices, or attempts to lure or entice,
 7 a child under the age of 12 into a structure, dwelling, or
 8 conveyance for other than a lawful purpose commits a
 9 misdemeanor of the first degree, punishable as provided in s.
 10 775.082 or s. 775.083.

11 (b) A person 18 years of age or over who, having been
 12 previously convicted of a violation of paragraph (a),
 13 intentionally lures or entices, or attempts to lure or entice,
 14 a child under the age of 12 into a structure, dwelling, or
 15 conveyance for other than a lawful purpose commits a felony of
 16 the third degree, punishable as provided in s. 775.082, s.
 17 775.083, or s. 775.084.

18 (c) A person 18 years of age or over the age of 18
 19 who, having been previously convicted of a violation of
 20 chapter 794 or s. 800.04, or a violation of a similar law of
 21 another jurisdiction, intentionally lures or entices, or
 22 attempts to lure or entice, a child under the age of 12 into a
 23 structure, dwelling, or conveyance for other than a lawful
 24 purpose commits a felony of the third degree, punishable as
 25 provided in s. 775.082, s. 775.083, or s. 775.084.

26 ~~(b) For purposes of this section, the luring or~~
 27 ~~enticing, or attempted luring or enticing, of a child under~~
 28 ~~the age of 12 into a structure, dwelling, or conveyance~~
 29 ~~without the consent of the child's parent or legal guardian~~
 30 ~~shall be prima facie evidence of other than a lawful purpose.~~

31 (3) It is an affirmative defense to a prosecution

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1 under this section that:

2 (a) The person reasonably believed that his or her
3 action was necessary to prevent the child from being seriously
4 injured.

5 (b) The person lured or enticed, or attempted to lure
6 or entice, the child under the age of 12 into a structure,
7 dwelling, or conveyance for a lawful purpose.

8 (c) The person's actions were reasonable under the
9 circumstances and the defendant did not have any intent to
10 harm the health, safety, or welfare of the child.

11 Section 2. Subsections (4) and (10) of section 775.21,
12 Florida Statutes, are amended to read:

13 775.21 The Florida Sexual Predators Act.--

14 (4) SEXUAL PREDATOR CRITERIA.--

15 (a) For a current offense committed on or after
16 October 1, 1993, upon conviction, an offender shall be
17 designated as a "sexual predator" under subsection (5), and
18 subject to registration under subsection (6) and community and
19 public notification under subsection (7) if:

20 1. The felony is:

21 a. A capital, life, or first-degree felony violation,
22 or any attempt thereof, of s. 787.01 or s. 787.02, where the
23 victim is a minor and the defendant is not the victim's
24 parent, or of chapter 794, s. 800.04, or s. 847.0145, or a
25 violation of a similar law of another jurisdiction; or

26 b. Any felony violation, or any attempt thereof, of s.
27 787.01, s. 787.02, or s. 787.025(2)(c) ~~s. 787.025~~, where the
28 victim is a minor and the defendant is not the victim's
29 parent; chapter 794, excluding ss. 794.011(10) and 794.0235;
30 s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; or s.
31 847.0145; or a violation of a similar law of another

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1 jurisdiction, and the offender has previously been convicted
 2 of or found to have committed, or has pled nolo contendere or
 3 guilty to, regardless of adjudication, any violation of s.
 4 787.01, s. 787.02, or s. 787.025(2)(c) ~~s. 787.025~~, where the
 5 victim is a minor and the defendant is not the victim's
 6 parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s.
 7 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
 8 847.0135; or s. 847.0145, or a violation of a similar law of
 9 another jurisdiction;

10 2. The offender has not received a pardon for any
 11 felony or similar law of another jurisdiction that is
 12 necessary for the operation of this paragraph; and

13 3. A conviction of a felony or similar law of another
 14 jurisdiction necessary to the operation of this paragraph has
 15 not been set aside in any postconviction proceeding.

16 (b) In order to be counted as a prior felony for
 17 purposes of this subsection, the felony must have resulted in
 18 a conviction sentenced separately, or an adjudication of
 19 delinquency entered separately, prior to the current offense
 20 and sentenced or adjudicated separately from any other felony
 21 conviction that is to be counted as a prior felony.

22 (c) If an offender has been registered as a sexual
 23 predator by the Department of Corrections, the department, or
 24 any other law enforcement agency and if:

25 1. The court did not, for whatever reason, make a
 26 written finding at the time of sentencing that the offender
 27 was a sexual predator; or

28 2. The offender was administratively registered as a
 29 sexual predator because the Department of Corrections, the
 30 department, or any other law enforcement agency obtained
 31 information that indicated that the offender met the criteria

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1 for designation as a sexual predator based on a violation of a
2 similar law in another jurisdiction,
3
4 the department shall remove that offender from the
5 department's list of sexual predators and, for an offender
6 described under subparagraph 1., shall notify the state
7 attorney who prosecuted the offense that met the criteria for
8 administrative designation as a sexual predator, and, for an
9 offender described under this subparagraph, shall notify the
10 state attorney of the county where the offender establishes or
11 maintains a permanent or temporary residence. The state
12 attorney shall bring the matter to the court's attention in
13 order to establish that the offender meets the criteria for
14 designation as a sexual predator. If the court makes a written
15 finding that the offender is a sexual predator, the offender
16 must be designated as a sexual predator, must register or be
17 registered as a sexual predator with the department as
18 provided in subsection (6), and is subject to the community
19 and public notification as provided in subsection (7). If the
20 court does not make a written finding that the offender is a
21 sexual predator, the offender may not be designated as a
22 sexual predator with respect to that offense and is not
23 required to register or be registered as a sexual predator
24 with the department.

25 (d) An offender who has been determined to be a
26 sexually violent predator pursuant to a civil commitment
27 proceeding under chapter 394 shall be designated as a "sexual
28 predator" under subsection (5) and subject to registration
29 under subsection (6) and community and public notification
30 under subsection (7).

31 (10) PENALTIES.--

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1 (a) Except as otherwise specifically provided, a
2 sexual predator who fails to register; who fails, after
3 registration, to maintain, acquire, or renew a driver's
4 license or identification card; who fails to provide required
5 location information or change-of-name information; who fails
6 to make a required report in connection with vacating a
7 permanent residence; who fails to reregister as required; who
8 fails to respond to any address verification correspondence
9 from the department within 3 weeks of the date of the
10 correspondence; or who otherwise fails, by act or omission, to
11 comply with the requirements of this section, commits a felony
12 of the third degree, punishable as provided in s. 775.082, s.
13 775.083, or s. 775.084.

14 (b) A sexual predator who has been convicted of or
15 found to have committed, or has pled nolo contendere or guilty
16 to, regardless of adjudication, any violation, or attempted
17 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c) ~~s.~~
18 ~~787.025~~, where the victim is a minor and the defendant is not
19 the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s.
20 794.05; s. 796.03; s. 800.04; s. 827.071; s. 847.0133; or s.
21 847.0145, or a violation of a similar law of another
22 jurisdiction, when the victim of the offense was a minor, and
23 who works, whether for compensation or as a volunteer, at any
24 business, school, day care center, park, playground, or other
25 place where children regularly congregate, commits a felony of
26 the third degree, punishable as provided in s. 775.082, s.
27 775.083, or s. 775.084.

28 (c) Any person who misuses public records information
29 relating to a sexual predator, as defined in this section, or
30 a sexual offender, as defined in s. 943.0435 or s. 944.607, to
31 secure a payment from such a predator or offender; who

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1 knowingly distributes or publishes false information relating
 2 to such a predator or offender which the person misrepresents
 3 as being public records information; or who materially alters
 4 public records information with the intent to misrepresent the
 5 information, including documents, summaries of public records
 6 information provided by law enforcement agencies, or public
 7 records information displayed by law enforcement agencies on
 8 websites or provided through other means of communication,
 9 commits a misdemeanor of the first degree, punishable as
 10 provided in s. 775.082 or s. 775.083.

11 (d) A sexual predator who commits any act or omission
 12 in violation of this section may be prosecuted for the act or
 13 omission in the county in which the act or omission was
 14 committed, the county of the last registered address of the
 15 sexual predator, or the county in which the conviction
 16 occurred for the offense or offenses that meet the criteria
 17 for designating a person as a sexual predator. In addition, a
 18 sexual predator may be prosecuted for any such act or omission
 19 in the county in which he or she was designated a sexual
 20 predator.

21 (e) An arrest on charges of failure to register, the
 22 service of an information or a complaint for a violation of
 23 this section, or an arraignment on charges for a violation of
 24 this section constitutes actual notice of the duty to register
 25 when the predator has been provided and advised of his or her
 26 statutory obligation to register under subsection (6). A
 27 sexual predator's failure to immediately register as required
 28 by this section following such arrest, service, or arraignment
 29 constitutes grounds for a subsequent charge of failure to
 30 register. A sexual predator charged with the crime of failure
 31 to register who asserts, or intends to assert, a lack of

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1 notice of the duty to register as a defense to a charge of
 2 failure to register shall immediately register as required by
 3 this section. A sexual predator who is charged with a
 4 subsequent failure to register may not assert the defense of a
 5 lack of notice of the duty to register.

6 (f) Registration following such arrest, service, or
 7 arraignment is not a defense and does not relieve the sexual
 8 predator of criminal liability for the failure to register.

9 (g) Any person who has reason to believe that a sexual
 10 predator is not complying, or has not complied, with the
 11 requirements of this section and who, with the intent to
 12 assist the sexual predator in eluding a law enforcement agency
 13 that is seeking to find the sexual predator to question the
 14 sexual predator about, or to arrest the sexual predator for,
 15 his or her noncompliance with the requirements of this
 16 section:

17 1. Withholds information from, or does not notify, the
 18 law enforcement agency about the sexual predator's
 19 noncompliance with the requirements of this section, and, if
 20 known, the whereabouts of the sexual predator;

21 2. Harbors, or attempts to harbor, or assists another
 22 person in harboring or attempting to harbor, the sexual
 23 predator;

24 3. Conceals or attempts to conceal, or assists another
 25 person in concealing or attempting to conceal, the sexual
 26 predator; or

27 4. Provides information to the law enforcement agency
 28 regarding the sexual predator which the person knows to be
 29 false information,

30
 31 commits a felony of the third degree, punishable as provided

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1 in s. 775.082, s. 775.083, or s. 775.084. This paragraph does
 2 not apply if the sexual predator is incarcerated in or is in
 3 the custody of a state correctional facility, a private
 4 correctional facility, a local jail, or a federal correctional
 5 facility.

6 Section 3. Subsection (2) of section 794.0115, Florida
 7 Statutes, is amended to read:

8 794.0115 Dangerous sexual felony offender; mandatory
 9 sentencing.--

10 (2) Any person who is convicted of a violation of s.
 11 787.025(2)(c) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or
 12 (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s.
 13 827.071(2), (3), or (4); or s. 847.0145; or of any similar
 14 offense under a former designation, which offense the person
 15 committed when he or she was 18 years of age or older, and the
 16 person:

17 (a) Caused serious personal injury to the victim as a
 18 result of the commission of the offense;

19 (b) Used or threatened to use a deadly weapon during
 20 the commission of the offense;

21 (c) Victimized more than one person during the course
 22 of the criminal episode applicable to the offense;

23 (d) Committed the offense while under the jurisdiction
 24 of a court for a felony offense under the laws of this state,
 25 for an offense that is a felony in another jurisdiction, or
 26 for an offense that would be a felony if that offense were
 27 committed in this state; or

28 (e) Has previously been convicted of a violation of s.
 29 787.025(2)(c) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or
 30 (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s.
 31 827.071(2), (3), or (4); s. 847.0145; of any offense under a

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1 former statutory designation which is similar in elements to
 2 an offense described in this paragraph; or of any offense that
 3 is a felony in another jurisdiction, or would be a felony if
 4 that offense were committed in this state, and which is
 5 similar in elements to an offense described in this paragraph,
 6
 7 is a dangerous sexual felony offender, who must be sentenced
 8 to a mandatory minimum term of 25 years imprisonment up to,
 9 and including, life imprisonment.

10 Section 4. Paragraph (a) of subsection (1) of section
 11 943.0435, Florida Statutes, is amended to read:

12 943.0435 Sexual offenders required to register with
 13 the department; penalty.--

14 (1) As used in this section, the term:

15 (a) "Sexual offender" means a person who:

16 1. Has been convicted of committing, or attempting,
 17 soliciting, or conspiring to commit, any of the criminal
 18 offenses proscribed in the following statutes in this state or
 19 similar offenses in another jurisdiction: s. 787.01, s.
 20 787.02, or s. 787.025(2)(c) ~~s. 787.025~~, where the victim is a
 21 minor and the defendant is not the victim's parent; chapter
 22 794, excluding ss. 794.011(10) and 794.0235; s. 796.03; s.
 23 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s.
 24 847.0137; s. 847.0138; s. 847.0145; or any similar offense
 25 committed in this state which has been redesignated from a
 26 former statute number to one of those listed in this
 27 subparagraph; and

28 2. Has been released on or after October 1, 1997, from
 29 the sanction imposed for any conviction of an offense
 30 described in subparagraph 1. For purposes of subparagraph 1.,
 31 a sanction imposed in this state or in any other jurisdiction

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1 includes, but is not limited to, a fine, probation, community
2 control, parole, conditional release, control release, or
3 incarceration in a state prison, federal prison, private
4 correctional facility, or local detention facility; or

5 3. Establishes or maintains a residence in this state
6 and who has not been designated as a sexual predator by a
7 court of this state but who has been designated as a sexual
8 predator, as a sexually violent predator, or by another sexual
9 offender designation in another state or jurisdiction and was,
10 as a result of such designation, subjected to registration or
11 community or public notification, or both, or would be if the
12 person were a resident of that state or jurisdiction; or

13 4. Establishes or maintains a residence in this state
14 who is in the custody or control of, or under the supervision
15 of, any other state or jurisdiction as a result of a
16 conviction for committing, or attempting, soliciting, or
17 conspiring to commit, any of the criminal offenses proscribed
18 in the following statutes or similar offense in another
19 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c) ~~s.~~
20 ~~787.025~~, where the victim is a minor and the defendant is not
21 the victim's parent; chapter 794, excluding ss. 794.011(10)
22 and 794.0235; s. 796.03; s. 800.04; s. 825.1025; s. 827.071;
23 s. 847.0133; s. 847.0135; s. 847.0137; s. 847.0138; s.
24 847.0145; or any similar offense committed in this state which
25 has been redesignated from a former statute number to one of
26 those listed in this subparagraph.

27 Section 5. Paragraph (b) of subsection (1) of section
28 944.606, Florida Statutes, is amended to read:

29 944.606 Sexual offenders; notification upon release.--

30 (1) As used in this section:

31 (b) "Sexual offender" means a person who has been

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1 convicted of committing, or attempting, soliciting, or
 2 conspiring to commit, any of the criminal offenses proscribed
 3 in the following statutes in this state or similar offenses in
 4 another jurisdiction: s. 787.01, s. 787.02, or s.
 5 787.025(2)(c) ~~s. 787.025~~, where the victim is a minor and the
 6 defendant is not the victim's parent; chapter 794, excluding
 7 ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s.
 8 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137;
 9 s. 847.0138; s. 847.0145; or any similar offense committed in
 10 this state which has been redesignated from a former statute
 11 number to one of those listed in this subsection, when the
 12 department has received verified information regarding such
 13 conviction; an offender's computerized criminal history record
 14 is not, in and of itself, verified information.

15 Section 6. Paragraph (a) of subsection (1) of section
 16 944.607, Florida Statutes, is amended to read:

17 944.607 Notification to Department of Law Enforcement
 18 of information on sexual offenders.--

19 (1) As used in this section, the term:

20 (a) "Sexual offender" means a person who is in the
 21 custody or control of, or under the supervision of, the
 22 department or is in the custody of a private correctional
 23 facility:

24 1. On or after October 1, 1997, as a result of a
 25 conviction for committing, or attempting, soliciting, or
 26 conspiring to commit, any of the criminal offenses proscribed
 27 in the following statutes in this state or similar offenses in
 28 another jurisdiction: s. 787.01, s. 787.02, or s.
 29 787.025(2)(c) ~~s. 787.025~~, where the victim is a minor and the
 30 defendant is not the victim's parent; chapter 794, excluding
 31 ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s.

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1 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137;
 2 s. 847.0138; s. 847.0145; or any similar offense committed in
 3 this state which has been redesignated from a former statute
 4 number to one of those listed in this paragraph; or

5 2. Who establishes or maintains a residence in this
 6 state and who has not been designated as a sexual predator by
 7 a court of this state but who has been designated as a sexual
 8 predator, as a sexually violent predator, or by another sexual
 9 offender designation in another state or jurisdiction and was,
 10 as a result of such designation, subjected to registration or
 11 community or public notification, or both, or would be if the
 12 person were a resident of that state or jurisdiction.

13 Section 7. Subsection (1) of section 948.32, Florida
 14 Statutes, is amended to read:

15 948.32 Requirements of law enforcement agency upon
 16 arrest of persons for certain sex offenses.--

17 (1) When any state or local law enforcement agency
 18 investigates or arrests a person for committing, or
 19 attempting, soliciting, or conspiring to commit, a violation
 20 of s. 787.025(2)(c) ~~s. 787.025~~, chapter 794, s. 796.03, s.
 21 800.04, s. 827.071, s. 847.0133, s. 847.0135, or s. 847.0145,
 22 the law enforcement agency shall contact the Department of
 23 Corrections to verify whether the person under investigation
 24 or under arrest is on probation, community control, parole,
 25 conditional release, or control release.

26 Section 8. Subsection (8) of section 901.15, Florida
 27 Statutes, is amended to read:

28 901.15 When arrest by officer without warrant is
 29 lawful.--A law enforcement officer may arrest a person without
 30 a warrant when:

31 (8) There is probable cause to believe that the person

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1 has committed child abuse, as defined in s. 827.03, or has
 2 violated s. 787.025, relating to luring or enticing a child
 3 for unlawful purposes. The decision to arrest does ~~shall~~ not
 4 require consent of the victim or consideration of the
 5 relationship of the parties. It is the public policy of this
 6 state to protect abused children by strongly encouraging the
 7 arrest and prosecution of persons who commit child abuse. A
 8 law enforcement officer who acts in good faith and exercises
 9 due care in making an arrest under this subsection is immune
 10 from civil liability that otherwise might result by reason of
 11 his or her action.

12 Section 9. This act shall take effect July 1, 2006.

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15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete everything before the enacting clause

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19 and insert:

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A bill to be entitled

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An act relating to luring or enticing a child;

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amending s. 787.025, F.S.; defining the term

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"convicted"; providing that a person 18 years

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of age or over who intentionally lures or

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entices, or attempts to lure or entice, a child

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under the age of 12 into a structure, dwelling,

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or conveyance for other than a lawful purpose

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commits a misdemeanor of the first degree;

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providing criminal penalties; providing that a

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person who has previously been convicted of

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this offense and who intentionally lures or

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1 entices, or attempts to lure or entice, a child
2 under the age of 12 into a structure, dwelling,
3 or conveyance for other than a lawful purpose
4 commits a felony of the third degree; providing
5 criminal penalties; deleting a presumption
6 regarding other than a lawful purpose; amending
7 ss. 775.21, 794.0115, 943.0435, 944.606,
8 944.607, and 948.32, F.S.; conforming
9 cross-references; amending s. 901.15, F.S.;
10 authorizing a law enforcement officer to arrest
11 a person without a warrant if there is probable
12 cause to believe that the person is
13 intentionally luring or enticing, or attempting
14 to lure or entice, a child under the age of 12
15 into a structure, dwelling, or conveyance for
16 other than a lawful purpose; providing an
17 effective date.

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