

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.)

Prepared By: Criminal Justice Committee

BILL: SB 640

INTRODUCER: Senator Miller

SUBJECT: Luring or enticing a child

DATE: January 30, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 640 provides that it is a misdemeanor of the first degree 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, dwelling, or conveyance for other than a lawful purpose. The bill references a violation of the luring statute as a qualifying prior conviction under the felony luring provision, which requires that the person have a qualifying prior conviction. The bill also references the current third degree felony offense of luring or enticing in several sections of the Florida Statutes so that the offense will:

- Be a qualifying sexual offense for mandatory sentencing under the Dangerous Sexual Felony Offender Act and registration as a sexual offender;
- Require the Department of Corrections to provide certain information about the offender to designated law enforcement agencies if the offender is released from incarceration for this offense; and
- Require a law enforcement agency that arrests a person for this offense to verify with the Department of Corrections whether the person is on probation, community control, parole, conditional release, or control release.

The bill also authorizes a law enforcement officer to make a warrantless arrest for a violation of the luring statute where there is probable cause to believe the person committed such violation.

This bill substantially amends the following sections of the Florida Statutes: 787.025; 794.0115; 943.0435; 944.606; 944.607; 948.32; and 901.15.

II. Present Situation:

A. Luring or enticing a child

Section 787.025(2)(a), F.S., provides that it is a third degree felony to commit the offense of luring.¹ 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.”²

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.

B. Dangerous sexual felony offender

Section 794.0115, F.S., is the “Dangerous Sexual Felony Offender Act.” Under this section a person who is convicted of any of a list of sexual battery offenses that the person committed when he or she was 18 years of age or older is subject to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment if the person meets one of a list of criteria, such as causing serious personal injury to the victim as a result of the commission of the offense.

C. Sexual Offender Registration

Section 943.0435, F.S., requires that certain persons who meet the definition of “sexual offender,” as provided in s. 943.0435(1), F.S., must register as such according to the registration requirements of the section. Section 943.0435(4), F.S., provides that, as used in the section, “sexual offender” means any of the three described persons:

¹ Luring is an unranked offense. Pursuant to s. 921.0023, F.S., an unranked third degree felony defaults to Level 1. What this means is that a person who commits this offense will receive a non-prison sanction as the lowest permissible sentence scored unless the person has additional offenses, prior offenses, or sentencing point factors or multipliers that might score a lowest permissible sentence of imprisonment. However, even if the lowest permissible sentence is a non-prison sanction, the sentencing court may impose a greater sentence of up to five-years imprisonment, the maximum penalty for a third degree felony as provided in s. 775.082, F.S.

² *State v. Brake*, 796 So.2d 522, 529 (Fla. 2001). While the Court in *Brake* upheld the constitutionality of the statute 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. This provision remains in the law.

- A person who has been released on or after October 1, 1997, from the sanction imposed in this state or any other jurisdiction for a conviction for committing, or attempting, soliciting, or conspiring to commit, any of a list of qualifying offenses, such as sexual battery, proscribed in this state or similar offenses in another jurisdiction.
- A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction.
- A person who establishes or maintains a residence in this state and who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of a list of qualifying offenses or any similar offense in another jurisdiction.

Section 944.607(1), F.S., requires the Department of Corrections (DOC) to notify the Florida Department of Law Enforcement (FDLE) of information regarding certain persons who meet the definition of “sexual offender” in s. 944.607(1), F.S. Registration requirements for this sexual offender are provided both in this section and in s. 943.0435, F.S. Section 944.607(1), F.S., provides that, as used in the section, “sexual offender” means either of the following persons:

- A person who is in the custody or control of, or under the supervision of, the DOC or is in the custody of a private correctional facility on or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of a list of qualifying offenses (identical to the list in s. 943.0435(1), F.S.).
- A person who is in the custody or control of, or under the supervision of, the DOC or is in the custody of a private correctional facility and who establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state but has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction.

D. Notification of release of a sexual offender

Section 944.606, F.S., provides that when a sexual offender³ is being released from incarceration, the DOC must provide certain identification information about the offender, the offender’s address upon release, if known, the offender’s fingerprints, and a digitized photo of the offender to the sheriff of the county (or, if applicable, the police chief of the municipality) where the victim resides, the sheriff of the county from where the offender was convicted, and the FDLE. The DOC may also provide this information to the victim, the victim’s parents (if the victim is a minor), or a member of the public, if requested. The DOC must also provide criminal

³ The qualifying offenses listed under the definition of “sexual offender” in this section are identical to the list of qualifying offenses in ss. 943.0435 and 944.607, F.S.

and correction records and nonprivileged personnel and treatment records, if available, regarding the offender to the sheriffs previously described, if requested.

E. Notification of arrest of persons for certain sexual offenses

Section 948.32(1), F.S., provides that when any state or local law enforcement agency investigates or arrests a person for committing, or attempting, soliciting, or conspiring to commit, a violation of chapter 794, F.S., or ss. 787.025, 796.03, 800.04, 827.071, 847.0133, 847.0135, or 847.0145, F.S., the law enforcement agency shall contact the Department of Corrections to verify whether the person under investigation or under arrest is on probation, community control, parole, conditional release, or control release.

F. Lawful warrantless arrest of person committing child abuse

Section 901.15(8), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed child abuse, as defined in s. 827.03, F.S. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

III. Effect of Proposed Changes:

Senate Bill 640 amends s. 787.025, F.S., the luring statute, to provide that it is a misdemeanor of the first degree 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, dwelling, or conveyance for other than a lawful purpose.

The bill also provides a definition of “convicted” in the luring statute, which indicates that it encompasses a withhold of adjudication.

The bill also references a violation of the luring statute as a qualifying prior conviction under the felony luring provision, which requires that the person have a qualifying prior conviction.

The bill also references the felony luring offense in s. 794.0115, F.S., the Dangerous Sexual Felony Offender Act, will make this luring offense a qualifying offense. A person who commits this luring offense and meets other criteria of the statute may be subject to the mandatory sentencing provisions of the act.

The bill also references the felony luring offense in ss. 943.0435 and 944.607, F.S., to make this luring offense a qualifying offense for the purpose of sexual offender registration.

The bill also references the felony luring offense in s. 944.606, F.S., to require the Department of Corrections to provide certain information about the offender to designated law enforcement agencies if the offender is released from incarceration for this offense.

The bill also references the felony luring offense in s. 948.32, F.S., to require a law enforcement agency that arrests a person for the felony luring offense to verify with the Department of

Corrections whether the person is on probation, community control, parole, conditional release, or control release.

The bill also references the luring statute in s. 901.15, F.S., to authorize a law enforcement officer to make a warrantless arrest for a violation of the luring statute where there is probable cause to believe the person committed such violation.

The bill takes effect July 1, 2006.

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:

A preliminary estimate of the bill provided by the Office of Economic and Demographic Research of the Florida Legislature is that the bill appears to have an insignificant prison bed impact. However, a final, official estimate must be provided by the Criminal Justice Impact Conference, which had not met to consider the bill at the time this analysis was completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The misdemeanor luring offense created by the bill appears to address a case recently reported by the *St. Petersburg Times*. According to the newspaper, law enforcement officers were unable

to make a legal arrest of a Dade City man who allegedly lured an 11 year-old girl into the man's pick-up because felony luring applies only to an adult with a previous conviction for a sexual battery or lewd offense, neither of which the Dade City man had. The newspaper also reported that the offenses of kidnapping and interfering with custody did not apply because the girl did not get into the man's truck.⁴

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴ Colavecchio-Van Sickler, *Law sought to close gap in child protection*, St. Petersburg Times, November 15, 2005 (http://www.sptimes.com/2005/11/15/Hillsborough/Law_sought_to_close_g.shtml)

VIII. Summary of Amendments:

None.

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