

By the Committee on Judiciary; and Senators Miller and Lynn

590-1910-06

1                                    A bill to be entitled  
2                    An act relating to luring or enticing a child;  
3                    amending s. 787.025, F.S.; defining the term  
4                    "convicted"; providing that a person 18 years  
5                    of age or older who intentionally lures or  
6                    entices, or attempts to lure or entice, a child  
7                    under the age of 12 into a structure, dwelling,  
8                    or conveyance for other than a lawful purpose  
9                    commits a misdemeanor of the first degree;  
10                   providing criminal penalties; providing that a  
11                   person who has previously been convicted of  
12                   this offense and who intentionally lures or  
13                   entices, or attempts to lure or entice, a child  
14                   under the age of 12 into a structure, dwelling,  
15                   or conveyance for other than a lawful purpose  
16                   commits a felony of the third degree; providing  
17                   criminal penalties; deleting a presumption  
18                   regarding what constitutes other than a lawful  
19                   purpose; amending ss. 775.21, 794.0115,  
20                   943.0435, 944.606, 944.607, and 948.32, F.S.;  
21                   conforming cross-references; amending s.  
22                   901.15, F.S.; authorizing a law enforcement  
23                   officer to arrest a person without a warrant if  
24                   there is probable cause to believe that the  
25                   person is intentionally luring or enticing, or  
26                   attempting to lure or entice, a child under the  
27                   age of 12 into a structure, dwelling, or  
28                   conveyance for other than a lawful purpose;  
29                   providing an effective date.  
30  
31    Be It Enacted by the Legislature of the State of Florida:

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

3 787.025 Luring or enticing a child.--

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

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

8 (b) "Dwelling" means a building or conveyance of any  
9 kind, either temporary or permanent, mobile or immobile, which  
10 has a roof over it and is designed to be occupied by people  
11 lodging together therein at night, together with the curtilage  
12 thereof.

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

15 (d) "Convicted" means a determination of guilt which  
16 is the result of a trial or the entry of a plea of guilty or  
17 nolo contendere, regardless of whether adjudication is  
18 withheld.

19 (2)(a) A person 18 years of age or older who  
20 intentionally lures or entices, or attempts to lure or entice,  
21 a child under the age of 12 into a structure, dwelling, or  
22 conveyance for other than a lawful purpose commits a  
23  misdemeanor of the first degree, punishable as provided in s.  
24 775.082 or s. 775.083.

25 (b) A person 18 years of age or older who, having been  
26 previously convicted of a violation of paragraph (a),  
27 intentionally lures or entices, or attempts to lure or entice,  
28 a child under the age of 12 into a structure, dwelling, or  
29 conveyance for other than a lawful purpose commits a felony of  
30 the third degree, punishable as provided in s. 775.082, s.  
31 775.083, or s. 775.084.

1           (c) A person 18 years of age or older ~~over the age of~~  
2 ~~18~~ who, having been previously convicted of a violation of  
3 chapter 794 or s. 800.04, or a violation of a similar law of  
4 another jurisdiction, intentionally lures or entices, or  
5 attempts to lure or entice, a child under the age of 12 into a  
6 structure, dwelling, or conveyance for other than a lawful  
7 purpose commits a felony of the third degree, punishable as  
8 provided in s. 775.082, s. 775.083, or s. 775.084.

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

14           (3) It is an affirmative defense to a prosecution  
15 under this section that:

16           (a) The person reasonably believed that his or her  
17 action was necessary to prevent the child from being seriously  
18 injured.

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

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

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

27           775.21 The Florida Sexual Predators Act.--

28           (4) SEXUAL PREDATOR CRITERIA.--

29           (a) For a current offense committed on or after  
30 October 1, 1993, upon conviction, an offender shall be  
31 designated as a "sexual predator" under subsection (5), and

1 subject to registration under subsection (6) and community and  
2 public notification under subsection (7) if:

3 1. The felony is:

4 a. A capital, life, or first-degree felony violation,  
5 or any attempt thereof, of s. 787.01 or s. 787.02, where the  
6 victim is a minor and the defendant is not the victim's  
7 parent, or of chapter 794, s. 800.04, or s. 847.0145, or a  
8 violation of a similar law of another jurisdiction; or

9 b. Any felony violation, or any attempt thereof, of s.  
10 787.01, s. 787.02, or s. 787.025(2)(c) ~~s. 787.025~~, where the  
11 victim is a minor and the defendant is not the victim's  
12 parent; chapter 794, excluding ss. 794.011(10) and 794.0235;  
13 s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; or s.  
14 847.0145; or a violation of a similar law of another  
15 jurisdiction, and the offender has previously been convicted  
16 of or found to have committed, or has pled nolo contendere or  
17 guilty to, regardless of adjudication, any violation of s.  
18 787.01, s. 787.02, or s. 787.025(2)(c) ~~s. 787.025~~, where the  
19 victim is a minor and the defendant is not the victim's  
20 parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s.  
21 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.  
22 847.0135; or s. 847.0145, or a violation of a similar law of  
23 another jurisdiction;

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

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

30 (b) In order to be counted as a prior felony for  
31 purposes of this subsection, the felony must have resulted in

1 a conviction sentenced separately, or an adjudication of  
2 delinquency entered separately, prior to the current offense  
3 and sentenced or adjudicated separately from any other felony  
4 conviction that is to be counted as a prior felony.

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

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

11 2. The offender was administratively registered as a  
12 sexual predator because the Department of Corrections, the  
13 department, or any other law enforcement agency obtained  
14 information that indicated that the offender met the criteria  
15 for designation as a sexual predator based on a violation of a  
16 similar law in another jurisdiction,

17  
18 the department shall remove that offender from the  
19 department's list of sexual predators and, for an offender  
20 described under subparagraph 1., shall notify the state  
21 attorney who prosecuted the offense that met the criteria for  
22 administrative designation as a sexual predator, and, for an  
23 offender described under this subparagraph, shall notify the  
24 state attorney of the county where the offender establishes or  
25 maintains a permanent or temporary residence. The state  
26 attorney shall bring the matter to the court's attention in  
27 order to establish that the offender meets the criteria for  
28 designation as a sexual predator. If the court makes a written  
29 finding that the offender is a sexual predator, the offender  
30 must be designated as a sexual predator, must register or be  
31 registered as a sexual predator with the department as

1 provided in subsection (6), and is subject to the community  
2 and public notification as provided in subsection (7). If the  
3 court does not make a written finding that the offender is a  
4 sexual predator, the offender may not be designated as a  
5 sexual predator with respect to that offense and is not  
6 required to register or be registered as a sexual predator  
7 with the department.

8 (d) An offender who has been determined to be a  
9 sexually violent predator pursuant to a civil commitment  
10 proceeding under chapter 394 shall be designated as a "sexual  
11 predator" under subsection (5) and subject to registration  
12 under subsection (6) and community and public notification  
13 under subsection (7).

14 (10) PENALTIES.--

15 (a) Except as otherwise specifically provided, a  
16 sexual predator who fails to register; who fails, after  
17 registration, to maintain, acquire, or renew a driver's  
18 license or identification card; who fails to provide required  
19 location information or change-of-name information; who fails  
20 to make a required report in connection with vacating a  
21 permanent residence; who fails to reregister as required; who  
22 fails to respond to any address verification correspondence  
23 from the department within 3 weeks of the date of the  
24 correspondence; or who otherwise fails, by act or omission, to  
25 comply with the requirements of this section, commits a felony  
26 of the third degree, punishable as provided in s. 775.082, s.  
27 775.083, or s. 775.084.

28 (b) A sexual predator who has been convicted of or  
29 found to have committed, or has pled nolo contendere or guilty  
30 to, regardless of adjudication, any violation, or attempted  
31 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c) ~~s.~~

1 ~~787.025~~, where the victim is a minor and the defendant is not  
2 the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s.  
3 794.05; s. 796.03; s. 800.04; s. 827.071; s. 847.0133; or s.  
4 847.0145, or a violation of a similar law of another  
5 jurisdiction, when the victim of the offense was a minor, and  
6 who works, whether for compensation or as a volunteer, at any  
7 business, school, day care center, park, playground, or other  
8 place where children regularly congregate, commits a felony of  
9 the third degree, punishable as provided in s. 775.082, s.  
10 775.083, or s. 775.084.

11 (c) Any person who misuses public records information  
12 relating to a sexual predator, as defined in this section, or  
13 a sexual offender, as defined in s. 943.0435 or s. 944.607, to  
14 secure a payment from such a predator or offender; who  
15 knowingly distributes or publishes false information relating  
16 to such a predator or offender which the person misrepresents  
17 as being public records information; or who materially alters  
18 public records information with the intent to misrepresent the  
19 information, including documents, summaries of public records  
20 information provided by law enforcement agencies, or public  
21 records information displayed by law enforcement agencies on  
22 websites or provided through other means of communication,  
23 commits a misdemeanor of the first degree, punishable as  
24 provided in s. 775.082 or s. 775.083.

25 (d) A sexual predator who commits any act or omission  
26 in violation of this section may be prosecuted for the act or  
27 omission in the county in which the act or omission was  
28 committed, the county of the last registered address of the  
29 sexual predator, or the county in which the conviction  
30 occurred for the offense or offenses that meet the criteria  
31 for designating a person as a sexual predator. In addition, a

1 sexual predator may be prosecuted for any such act or omission  
2 in the county in which he or she was designated a sexual  
3 predator.

4 (e) An arrest on charges of failure to register, the  
5 service of an information or a complaint for a violation of  
6 this section, or an arraignment on charges for a violation of  
7 this section constitutes actual notice of the duty to register  
8 when the predator has been provided and advised of his or her  
9 statutory obligation to register under subsection (6). A  
10 sexual predator's failure to immediately register as required  
11 by this section following such arrest, service, or arraignment  
12 constitutes grounds for a subsequent charge of failure to  
13 register. A sexual predator charged with the crime of failure  
14 to register who asserts, or intends to assert, a lack of  
15 notice of the duty to register as a defense to a charge of  
16 failure to register shall immediately register as required by  
17 this section. A sexual predator who is charged with a  
18 subsequent failure to register may not assert the defense of a  
19 lack of notice of the duty to register.

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

23 (g) Any person who has reason to believe that a sexual  
24 predator is not complying, or has not complied, with the  
25 requirements of this section and who, with the intent to  
26 assist the sexual predator in eluding a law enforcement agency  
27 that is seeking to find the sexual predator to question the  
28 sexual predator about, or to arrest the sexual predator for,  
29 his or her noncompliance with the requirements of this  
30 section:

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

5           2. Harbors, or attempts to harbor, or assists another  
6 person in harboring or attempting to harbor, the sexual  
7 predator;

8           3. Conceals or attempts to conceal, or assists another  
9 person in concealing or attempting to conceal, the sexual  
10 predator; or

11           4. Provides information to the law enforcement agency  
12 regarding the sexual predator which the person knows to be  
13 false information,

14  
15 commits a felony of the third degree, punishable as provided  
16 in s. 775.082, s. 775.083, or s. 775.084. This paragraph does  
17 not apply if the sexual predator is incarcerated in or is in  
18 the custody of a state correctional facility, a private  
19 correctional facility, a local jail, or a federal correctional  
20 facility.

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

23           794.0115 Dangerous sexual felony offender; mandatory  
24 sentencing.--

25           (2) Any person who is convicted of a violation of s.  
26 787.025(2)(c) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or  
27 (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s.  
28 827.071(2), (3), or (4); or s. 847.0145; or of any similar  
29 offense under a former designation, which offense the person  
30 committed when he or she was 18 years of age or older, and the  
31 person:

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

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

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

7 (d) Committed the offense while under the jurisdiction  
8 of a court for a felony offense under the laws of this state,  
9 for an offense that is a felony in another jurisdiction, or  
10 for an offense that would be a felony if that offense were  
11 committed in this state; or

12 (e) Has previously been convicted of a violation of s.  
13 787.025(2)(c) ~~s. 787.025~~; s. 794.011(2), (3), (4), (5), or  
14 (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s.  
15 827.071(2), (3), or (4); s. 847.0145; of any offense under a  
16 former statutory designation which is similar in elements to  
17 an offense described in this paragraph; or of any offense that  
18 is a felony in another jurisdiction, or would be a felony if  
19 that offense were committed in this state, and which is  
20 similar in elements to an offense described in this paragraph,  
21  
22 is a dangerous sexual felony offender, who must be sentenced  
23 to a mandatory minimum term of 25 years imprisonment up to,  
24 and including, life imprisonment.

25 Section 4. Paragraph (a) of subsection (1) of section  
26 943.0435, Florida Statutes, is amended to read:

27 943.0435 Sexual offenders required to register with  
28 the department; penalty.--

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

30 (a) "Sexual offender" means a person who:  
31

1           1. Has been convicted of committing, or attempting,  
2 soliciting, or conspiring to commit, any of the criminal  
3 offenses proscribed in the following statutes in this state or  
4 similar offenses in another jurisdiction: s. 787.01, s.  
5 787.02, or s. 787.025(2)(c) ~~s. 787.025~~, where the victim is a  
6 minor and the defendant is not the victim's parent; chapter  
7 794, excluding ss. 794.011(10) and 794.0235; s. 796.03; s.  
8 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s.  
9 847.0137; s. 847.0138; s. 847.0145; or any similar offense  
10 committed in this state which has been redesignated from a  
11 former statute number to one of those listed in this  
12 subparagraph; and  
13           2. Has been released on or after October 1, 1997, from  
14 the sanction imposed for any conviction of an offense  
15 described in subparagraph 1. For purposes of subparagraph 1.,  
16 a sanction imposed in this state or in any other jurisdiction  
17 includes, but is not limited to, a fine, probation, community  
18 control, parole, conditional release, control release, or  
19 incarceration in a state prison, federal prison, private  
20 correctional facility, or local detention facility; or  
21           3. Establishes or maintains a residence in this state  
22 and who has not been designated as a sexual predator by a  
23 court of this state but who has been designated as a sexual  
24 predator, as a sexually violent predator, or by another sexual  
25 offender designation in another state or jurisdiction and was,  
26 as a result of such designation, subjected to registration or  
27 community or public notification, or both, or would be if the  
28 person were a resident of that state or jurisdiction; or  
29           4. Establishes or maintains a residence in this state  
30 who is in the custody or control of, or under the supervision  
31 of, any other state or jurisdiction as a result of a

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

12 Section 5. Paragraph (b) of subsection (1) of section  
13 944.606, Florida Statutes, is amended to read:

14 944.606 Sexual offenders; notification upon release.--

15 (1) As used in this section:

16 (b) "Sexual offender" means a person who has been  
17 convicted of committing, or attempting, soliciting, or  
18 conspiring to commit, any of the criminal offenses proscribed  
19 in the following statutes in this state or similar offenses in  
20 another jurisdiction: s. 787.01, s. 787.02, or s.  
21 787.025(2)(c) ~~s. 787.025~~, where the victim is a minor and the  
22 defendant is not the victim's parent; chapter 794, excluding  
23 ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s.  
24 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137;  
25 s. 847.0138; s. 847.0145; or any similar offense committed in  
26 this state which has been redesignated from a former statute  
27 number to one of those listed in this subsection, when the  
28 department has received verified information regarding such  
29 conviction; an offender's computerized criminal history record  
30 is not, in and of itself, verified information.  
31

1           Section 6. Paragraph (a) of subsection (1) of section  
2 944.607, Florida Statutes, is amended to read:

3           944.607 Notification to Department of Law Enforcement  
4 of information on sexual offenders.--

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

6           (a) "Sexual offender" means a person who is in the  
7 custody or control of, or under the supervision of, the  
8 department or is in the custody of a private correctional  
9 facility:

10           1. On or after October 1, 1997, as a result of a  
11 conviction for committing, or attempting, soliciting, or  
12 conspiring to commit, any of the criminal offenses proscribed  
13 in the following statutes in this state or similar offenses in  
14 another jurisdiction: s. 787.01, s. 787.02, or s.  
15 787.025(2)(c) ~~s. 787.025~~, where the victim is a minor and the  
16 defendant is not the victim's parent; chapter 794, excluding  
17 ss. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s.  
18 825.1025; s. 827.071; s. 847.0133; s. 847.0135; s. 847.0137;  
19 s. 847.0138; s. 847.0145; or any similar offense committed in  
20 this state which has been redesignated from a former statute  
21 number to one of those listed in this paragraph; or

22           2. Who establishes or maintains a residence in this  
23 state and who has not been designated as a sexual predator by  
24 a court of this state but who has been designated as a sexual  
25 predator, as a sexually violent predator, or by another sexual  
26 offender designation in another state or jurisdiction and was,  
27 as a result of such designation, subjected to registration or  
28 community or public notification, or both, or would be if the  
29 person were a resident of that state or jurisdiction.

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

1           948.32 Requirements of law enforcement agency upon  
2 arrest of persons for certain sex offenses.--

3           (1) When any state or local law enforcement agency  
4 investigates or arrests a person for committing, or  
5 attempting, soliciting, or conspiring to commit, a violation  
6 of s. 787.025(2)(c) ~~s. 787.025~~, chapter 794, s. 796.03, s.  
7 800.04, s. 827.071, s. 847.0133, s. 847.0135, or s. 847.0145,  
8 the law enforcement agency shall contact the Department of  
9 Corrections to verify whether the person under investigation  
10 or under arrest is on probation, community control, parole,  
11 conditional release, or control release.

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

14           901.15 When arrest by officer without warrant is  
15 lawful.--A law enforcement officer may arrest a person without  
16 a warrant when:

17           (8) There is probable cause to believe that the person  
18 has committed child abuse, as defined in s. 827.03, or has  
19 violated s. 787.025, relating to luring or enticing a child  
20 for unlawful purposes. The decision to arrest ~~does shall~~ not  
21 require consent of the victim or consideration of the  
22 relationship of the parties. It is the public policy of this  
23 state to protect abused children by strongly encouraging the  
24 arrest and prosecution of persons who commit child abuse. A  
25 law enforcement officer who acts in good faith and exercises  
26 due care in making an arrest under this subsection is immune  
27 from civil liability that otherwise might result by reason of  
28 his or her action.

29           Section 9. This act shall take effect July 1, 2006.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 640

Clarifies that the qualifying age of a person subject to the luring or enticing a child statute includes persons 18 years of age by using the language "18 years of age or older" in place of the existing language "over the age of 18."

Moves the new felony luring offense, which requires a prior misdemeanor luring violation, into a separate paragraph for the purpose of maintaining the original content of the current felony luring offense, which was necessary to preserve the meaning of certain references to the existing felony offense.

Deletes the presumption of what constitutes the "other than a lawful purpose" element of the luring offense which has been declared unconstitutional by the Florida Supreme Court.

Conforms the references to the felony luring statute in the Florida Sexual Predators Act.