



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates a new misdemeanor offense.

Promote personal responsibility: This bill creates a sanction for potentially injurious behavior.

#### B. EFFECT OF PROPOSED CHANGES:

##### Luring or Enticing a Child

Section 787.025, F.S., makes it unlawful for a person over the age of 18, who has been previously convicted of a sexual offense under Chapter 794 or s. 800.04, F.S., to intentionally lure or entice or attempt to lure or entice 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. The offense is 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. It also provides that it is an affirmative defense to a prosecution for this offense that:

- 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 or
- 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.<sup>4</sup>

In State v. Brake, 796 So.2d 522 (Fla. 2001), the Florida Supreme Court overturned the Second District Court of Appeal who had found section 787.025, F.S. to be unconstitutionally vague. The lower court had ruled that the term "other than for a lawful purpose" failed to give "persons of common intelligence adequate warning of the proscribed conduct".<sup>5</sup> The Supreme Court ruled that the requirement that the offender lured or enticed a child "for other than a lawful purpose" 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." However, the court ruled that the part of the statute which 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" created an unconstitutional

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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.

<sup>4</sup> Hansman v. State, 679 So.2d 1216, 1217 (Fla. 4th DCA 1996).

<sup>5</sup> Brake v. State, 746 So. 2d 527 (Fla. 2nd DCA 1999).

statutory presumption.<sup>6</sup> The presumption that was struck down in Brake has not been removed from the statute.

HB 763 amends s. 787.025, F.S. to create a first degree misdemeanor offense for a person over the age of 18 who intentionally lures or entices or attempts to lure or entice a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose. Unlike the current felony offense, this newly created offense will not require proof that the offender has previously been convicted of a sexual offense.

The bill also amends the felony luring offense to add a prior conviction of the section as a qualifying offense. In other words, a person who unlawfully lures or entices a child will commit a felony offense if he or she has a prior conviction for the misdemeanor offense.

The bill also defines the term “convicted” for the purposes of the section to mean “a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld”.

The bill also amends current cross-references in the dangerous sexual felony offender statute (s. 794.0115, F.S.), and other statutes related to sexual offenders (ss. 943.0435, 944.606, 944.607, 948.32, F.S.) in order to specifically designate the felony luring or enticing offense. The new misdemeanor offense would not be included in these sections of statute which apply only to felonies.

#### Warrantless arrests

Currently, 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.

This bill adds the luring or enticing a child offense to this statute. Because s. 901.15, F.S. already authorizes an officer to arrest a person without a warrant for any felony offense if the officer has probable cause, the specific inclusion of s. 787.025, F.S. to the warrantless arrest statute will serve to authorize an officer to arrest a person without a warrant for the newly created misdemeanor offense.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 787.025, F.S.; creating misdemeanor offense.

Section 2. Amends s. 794.0115, F.S. to modify cross-reference

Section 3. Amends s. 943.0435, F.S. to modify cross-reference.

Section 4. Amends s. 944.606, F.S. to modify cross-reference.

Section 5. Amends s. 944.607, F.S. to modify cross-reference

Section 6. Amends s. 948.32, F.S. to modify cross-reference to section 787.025, F.S.

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<sup>6</sup> The court explained its holding as follows:

[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.

Section 7. Amends s. 901.15, F.S.; adding offense of luring or enticing a child to warrantless arrest statute.

Section 8. Provides effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The new misdemeanor may generate additional revenues through increased fines for the clerks of court and, indirectly, state government. The amount is likely to be indeterminate, yet minimal.

#### 2. Expenditures:

The Criminal Justice Impact Conference met on February 28, 2006 and determined that this bill would have an insignificant impact on the state's prison bed population.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

A misdemeanor may require the violator to pay a fine. Fines are payable to the local clerks of court. These funds are retained by the clerks with surplus funds accruing to the state. The amount of increased fine collections is likely to be minimal.

#### 2. Expenditures:

The bill creates a new misdemeanor offense that may impact current jail capacity; however, the fiscal impact on local governments is indeterminate because data on incidents that occurred prior to becoming an offense is unavailable.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**