

By Senator Fasano

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1 A bill to be entitled

2 An act relating to luring or enticing a child; amending s.
3 787.025, F.S.; increasing the age limit of the victim with
4 regard to the criminal offense of luring or enticing a
5 child; reenacting ss. 775.21(4) (a) and (10) (b),
6 794.0115(2), 943.0435(1) (a), 944.606(1) (b), 944.607(1) (a),
7 948.06(8) (c), and 948.32(1), F.S., relating to sexual
8 predator criteria, mandatory sentencing for sexual felony
9 offenders, the registration requirement of sexual
10 offenders, notification upon release of sexual offenders,
11 notification of information on sexual offenders to the
12 Department of Law Enforcement, additional requirements
13 regarding a probationer or offender in community control,
14 and requirements regarding the arrest of persons for
15 certain sex offenses, respectively, to incorporate the
16 amendments to s. 787.025, F.S., in references thereto;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsections (2) and (3) of section 787.025,
22 Florida Statutes, are amended to read:

23 787.025 Luring or enticing a child.--

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

29 (b) A person 18 years of age or older who, having been

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30 | previously convicted of a violation of paragraph (a),
31 | intentionally lures or entices, or attempts to lure or entice, a
32 | child under the age of 18 ~~12~~ into a structure, dwelling, or
33 | conveyance for other than a lawful purpose commits a felony of
34 | the third degree, punishable as provided in s. 775.082, s.
35 | 775.083, or s. 775.084.

36 | (c) A person 18 years of age or older who, having been
37 | previously convicted of a violation of chapter 794 or s. 800.04,
38 | or a violation of a similar law of another jurisdiction,
39 | intentionally lures or entices, or attempts to lure or entice, a
40 | child under the age of 18 ~~12~~ into a structure, dwelling, or
41 | conveyance for other than a lawful purpose commits a felony of
42 | the third degree, punishable as provided in s. 775.082, s.
43 | 775.083, or s. 775.084.

44 | (3) It is an affirmative defense to a prosecution under
45 | this section that:

46 | (a) The person reasonably believed that his or her action
47 | was necessary to prevent the child from being seriously injured.

48 | (b) The person lured or enticed, or attempted to lure or
49 | entice, the child under the age of 18 ~~12~~ into a structure,
50 | dwelling, or conveyance for a lawful purpose.

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

54 | Section 2. For the purpose of incorporating the amendments
55 | made by this act to section 787.025, Florida Statutes, in
56 | references thereto, paragraph (a) of subsection (4) and paragraph
57 | (b) of subsection (10) of section 775.21, Florida Statutes, are
58 | reenacted to read:

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59 | 775.21 The Florida Sexual Predators Act.--

60 | (4) SEXUAL PREDATOR CRITERIA.--

61 | (a) For a current offense committed on or after October 1,
62 | 1993, upon conviction, an offender shall be designated as a
63 | "sexual predator" under subsection (5), and subject to
64 | registration under subsection (6) and community and public
65 | notification under subsection (7) if:

66 | 1. The felony is:

67 | a. A capital, life, or first-degree felony violation, or
68 | any attempt thereof, of s. 787.01 or s. 787.02, where the victim
69 | is a minor and the defendant is not the victim's parent or
70 | guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
71 | violation of a similar law of another jurisdiction; or

72 | b. Any felony violation, or any attempt thereof, of s.
73 | 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
74 | minor and the defendant is not the victim's parent or guardian;
75 | s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
76 | 796.035; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0145;
77 | or s. 985.701(1); or a violation of a similar law of another
78 | jurisdiction, and the offender has previously been convicted of
79 | or found to have committed, or has pled nolo contendere or guilty
80 | to, regardless of adjudication, any violation of s. 787.01, s.
81 | 787.02, or s. 787.025(2)(c), where the victim is a minor and the
82 | defendant is not the victim's parent or guardian; s. 794.011,
83 | excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
84 | 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
85 | excluding s. 847.0135(4); s. 847.0145; or s. 985.701(1); or a
86 | violation of a similar law of another jurisdiction;

87 | 2. The offender has not received a pardon for any felony or

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88 similar law of another jurisdiction that is necessary for the
89 operation of this paragraph; and

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

93 (10) PENALTIES.--

94 (b) A sexual predator who has been convicted of or found to
95 have committed, or has pled nolo contendere or guilty to,
96 regardless of adjudication, any violation, or attempted
97 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
98 the victim is a minor and the defendant is not the victim's
99 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
100 794.05; s. 796.03; s. 796.035; s. 800.04; s. 827.071; s.
101 847.0133; s. 847.0145; or s. 985.701(1); or a violation of a
102 similar law of another jurisdiction when the victim of the
103 offense was a minor, and who works, whether for compensation or
104 as a volunteer, at any business, school, day care center, park,
105 playground, or other place where children regularly congregate,
106 commits a felony of the third degree, punishable as provided in
107 s. 775.082, s. 775.083, or s. 775.084.

108 Section 3. For the purpose of incorporating the amendments
109 made by this act to section 787.025, Florida Statutes, in
110 references thereto, subsection (2) of section 794.0115, Florida
111 Statutes, is reenacted to read:

112 794.0115 Dangerous sexual felony offender; mandatory
113 sentencing.--

114 (2) Any person who is convicted of a violation of s.
115 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4)
116 or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); or s.

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117 | 847.0145; or of any similar offense under a former designation,
118 | which offense the person committed when he or she was 18 years of
119 | age or older, and the person:

120 | (a) Caused serious personal injury to the victim as a
121 | result of the commission of the offense;

122 | (b) Used or threatened to use a deadly weapon during the
123 | commission of the offense;

124 | (c) Victimized more than one person during the course of
125 | the criminal episode applicable to the offense;

126 | (d) Committed the offense while under the jurisdiction of a
127 | court for a felony offense under the laws of this state, for an
128 | offense that is a felony in another jurisdiction, or for an
129 | offense that would be a felony if that offense were committed in
130 | this state; or

131 | (e) Has previously been convicted of a violation of s.
132 | 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4)
133 | or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); s.
134 | 847.0145; of any offense under a former statutory designation
135 | which is similar in elements to an offense described in this
136 | paragraph; or of any offense that is a felony in another
137 | jurisdiction, or would be a felony if that offense were committed
138 | in this state, and which is similar in elements to an offense
139 | described in this paragraph,

140 |
141 | is a dangerous sexual felony offender, who must be sentenced to a
142 | mandatory minimum term of 25 years imprisonment up to, and
143 | including, life imprisonment.

144 | Section 4. For the purpose of incorporating the amendments
145 | made by this act to section 787.025, Florida Statutes, in

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146 references thereto, paragraph (a) of subsection (1) of section
147 943.0435, Florida Statutes, is reenacted to read:

148 943.0435 Sexual offenders required to register with the
149 department; penalty.--

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

151 (a)1. "Sexual offender" means a person who meets the
152 criteria in sub-subparagraph a., sub-subparagraph b., sub-
153 subparagraph c., or sub-subparagraph d., as follows:

154 a.(I) Has been convicted of committing, or attempting,
155 soliciting, or conspiring to commit, any of the criminal offenses
156 proscribed in the following statutes in this state or similar
157 offenses in another jurisdiction: s. 787.01, s. 787.02, or s.
158 787.025(2)(c), where the victim is a minor and the defendant is
159 not the victim's parent or guardian; s. 794.011, excluding s.
160 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
161 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
162 847.0135(4); s. 847.0137; s. 847.0138; s. 847.0145; or s.
163 985.701(1); or any similar offense committed in this state which
164 has been redesignated from a former statute number to one of
165 those listed in this sub-sub-subparagraph; and

166 (II) Has been released on or after October 1, 1997, from
167 the sanction imposed for any conviction of an offense described
168 in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph
169 (I), a sanction imposed in this state or in any other
170 jurisdiction includes, but is not limited to, a fine, probation,
171 community control, parole, conditional release, control release,
172 or incarceration in a state prison, federal prison, private
173 correctional facility, or local detention facility;

174 b. Establishes or maintains a residence in this state and

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175 | who has not been designated as a sexual predator by a court of
176 | this state but who has been designated as a sexual predator, as a
177 | sexually violent predator, or by another sexual offender
178 | designation in another state or jurisdiction and was, as a result
179 | of such designation, subjected to registration or community or
180 | public notification, or both, or would be if the person were a
181 | resident of that state or jurisdiction, without regard to whether
182 | the person otherwise meets the criteria for registration as a
183 | sexual offender;

184 | c. Establishes or maintains a residence in this state who
185 | is in the custody or control of, or under the supervision of, any
186 | other state or jurisdiction as a result of a conviction for
187 | committing, or attempting, soliciting, or conspiring to commit,
188 | any of the criminal offenses proscribed in the following statutes
189 | or similar offense in another jurisdiction: s. 787.01, s. 787.02,
190 | or s. 787.025(2)(c), where the victim is a minor and the
191 | defendant is not the victim's parent or guardian; s. 794.011,
192 | excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
193 | 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
194 | excluding s. 847.0135(4); s. 847.0137; s. 847.0138; s. 847.0145;
195 | or s. 985.701(1); or any similar offense committed in this state
196 | which has been redesignated from a former statute number to one
197 | of those listed in this sub-subparagraph; or

198 | d. On or after July 1, 2007, has been adjudicated
199 | delinquent for committing, or attempting, soliciting, or
200 | conspiring to commit, any of the criminal offenses proscribed in
201 | the following statutes in this state or similar offenses in
202 | another jurisdiction when the juvenile was 14 years of age or
203 | older at the time of the offense:

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204 (I) Section 794.011, excluding s. 794.011(10);

205 (II) Section 800.04(4)(b) where the victim is under 12
206 years of age or where the court finds sexual activity by the use
207 of force or coercion;

208 (III) Section 800.04(5)(c)1. where the court finds
209 molestation involving unclothed genitals; or

210 (IV) Section 800.04(5)(d) where the court finds the use of
211 force or coercion and unclothed genitals.

212 2. For all qualifying offenses listed in sub-subparagraph
213 (1)(a)1.d., the court shall make a written finding of the age of
214 the offender at the time of the offense.

215
216 For each violation of a qualifying offense listed in this
217 subsection, the court shall make a written finding of the age of
218 the victim at the time of the offense. For a violation of s.
219 800.04(4), the court shall additionally make a written finding
220 indicating that the offense did or did not involve sexual
221 activity and indicating that the offense did or did not involve
222 force or coercion. For a violation of s. 800.04(5), the court
223 shall additionally make a written finding that the offense did or
224 did not involve unclothed genitals or genital area and that the
225 offense did or did not involve the use of force or coercion.

226 Section 5. For the purpose of incorporating the amendments
227 made by this act to section 787.025, Florida Statutes, in a
228 reference thereto, paragraph (b) of subsection (1) of section
229 944.606, Florida Statutes, is reenacted to read:

230 944.606 Sexual offenders; notification upon release.--

231 (1) As used in this section:

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

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233 of committing, or attempting, soliciting, or conspiring to
234 commit, any of the criminal offenses proscribed in the following
235 statutes in this state or similar offenses in another
236 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where
237 the victim is a minor and the defendant is not the victim's
238 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
239 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s.
240 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(4); s.
241 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any
242 similar offense committed in this state which has been
243 redesignated from a former statute number to one of those listed
244 in this subsection, when the department has received verified
245 information regarding such conviction; an offender's computerized
246 criminal history record is not, in and of itself, verified
247 information.

248 Section 6. For the purpose of incorporating the amendments
249 made by this act to section 787.025, Florida Statutes, in a
250 reference thereto, paragraph (a) of subsection (1) of section
251 944.607, Florida Statutes, is reenacted to read:

252 944.607 Notification to Department of Law Enforcement of
253 information on sexual offenders.--

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

255 (a) "Sexual offender" means a person who is in the custody
256 or control of, or under the supervision of, the department or is
257 in the custody of a private correctional facility:

258 1. On or after October 1, 1997, as a result of a conviction
259 for committing, or attempting, soliciting, or conspiring to
260 commit, any of the criminal offenses proscribed in the following
261 statutes in this state or similar offenses in another

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262 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where
263 the victim is a minor and the defendant is not the victim's
264 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
265 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s.
266 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(4); s.
267 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any
268 similar offense committed in this state which has been
269 redesignated from a former statute number to one of those listed
270 in this paragraph; or

271 2. Who establishes or maintains a residence in this state
272 and who has not been designated as a sexual predator by a court
273 of this state but who has been designated as a sexual predator,
274 as a sexually violent predator, or by another sexual offender
275 designation in another state or jurisdiction and was, as a result
276 of such designation, subjected to registration or community or
277 public notification, or both, or would be if the person were a
278 resident of that state or jurisdiction, without regard as to
279 whether the person otherwise meets the criteria for registration
280 as a sexual offender.

281 Section 7. For the purpose of incorporating the amendments
282 made by this act to section 787.025, Florida Statutes, in a
283 reference thereto, paragraph (c) of subsection (8) of section
284 948.06, Florida Statutes, is reenacted to read:

285 948.06 Violation of probation or community control;
286 revocation; modification; continuance; failure to pay restitution
287 or cost of supervision.--

288 (8)

289 (c) For purposes of this section, the term "qualifying
290 offense" means any of the following:

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- 291 1. Kidnapping or attempted kidnapping under s. 787.01,
292 false imprisonment of a child under the age of 13 under s.
293 787.02(3), or luring or enticing a child under s. 787.025(2) (b)
294 or (c).
- 295 2. Murder or attempted murder under s. 782.04, attempted
296 felony murder under s. 782.051, or manslaughter under s. 782.07.
- 297 3. Aggravated battery or attempted aggravated battery under
298 s. 784.045.
- 299 4. Sexual battery or attempted sexual battery under s.
300 794.011(2), (3), (4), or (8) (b) or (c).
- 301 5. Lewd or lascivious battery or attempted lewd or
302 lascivious battery under s. 800.04(4), lewd or lascivious
303 molestation under s. 800.04(5) (b) or (c)2., lewd or lascivious
304 conduct under s. 800.04(6) (b), or lewd or lascivious exhibition
305 under s. 800.04(7) (c).
- 306 6. Robbery or attempted robbery under s. 812.13, carjacking
307 or attempted carjacking under s. 812.133, or home invasion
308 robbery or attempted home invasion robbery under s. 812.135.
- 309 7. Lewd or lascivious offense upon or in the presence of an
310 elderly or disabled person or attempted lewd or lascivious
311 offense upon or in the presence of an elderly or disabled person
312 under s. 825.1025.
- 313 8. Sexual performance by a child or attempted sexual
314 performance by a child under s. 827.071.
- 315 9. Computer pornography under s. 847.0135(2) or (3),
316 transmission of child pornography under s. 847.0137, or selling
317 or buying of minors under s. 847.0145.
- 318 10. Poisoning food or water under s. 859.01.
- 319 11. Abuse of a dead human body under s. 872.06.

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320 12. Any burglary offense or attempted burglary offense that
321 is either a first degree felony or second degree felony under s.
322 810.02(2) or (3).

323 13. Arson or attempted arson under s. 806.01(1).

324 14. Aggravated assault under s. 784.021.

325 15. Aggravated stalking under s. 784.048(3), (4), (5), or
326 (7).

327 16. Aircraft piracy under s. 860.16.

328 17. Unlawful throwing, placing, or discharging of a
329 destructive device or bomb under s. 790.161(2), (3), or (4).

330 18. Treason under s. 876.32.

331 19. Any offense committed in another jurisdiction which
332 would be an offense listed in this paragraph if that offense had
333 been committed in this state.

334 Section 8. For the purpose of incorporating the amendments
335 made by this act to section 787.025, Florida Statutes, in a
336 reference thereto, subsection (1) of section 948.32, Florida
337 Statutes, is reenacted to read:

338 948.32 Requirements of law enforcement agency upon arrest
339 of persons for certain sex offenses.--

340 (1) When any state or local law enforcement agency
341 investigates or arrests a person for committing, or attempting,
342 soliciting, or conspiring to commit, a violation of s.
343 787.025(2)(c), chapter 794, s. 796.03, s. 800.04, s. 827.071, s.
344 847.0133, s. 847.0135, or s. 847.0145, the law enforcement agency
345 shall contact the Department of Corrections to verify whether the
346 person under investigation or under arrest is on probation,
347 community control, parole, conditional release, or control
348 release.

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Section 9. This act shall take effect October 1, 2008.