

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 698

INTRODUCER: Criminal Justice Committee and Senator Stargel

SUBJECT: Sexual Misconduct with Students by Authority Figures

DATE: April 21, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 698 reclassifies the felony degree of a specified sexual offense committed by an “authority figure” of a school against a student at that school. An “authority figure” is an adult employed by, volunteering at, or under contract with a school.

The Criminal Justice Impact Conference found the original bill would have an insignificant prison bed impact. It does not appear the amendment made to the original bill will change that estimate.

II. Present Situation:

Currently, Florida laws punishing sexual acts committed against children do not provide for any specific offense or felony enhancement when, for example, the perpetrator is a teacher or school administrator and the victim is a student.¹ The bill reclassifies the felony degree of a specified sexual offense committed by an “authority figure” of a school against a student at that school.

¹ An exception is s. 810.145(8)(a)2., F.S., a form of video voyeurism which is described in footnote three. Also, in some cases educational personnel are charged with the offense of sexual battery upon a minor by a person having “custodial authority” over the minor (s. 794.011(8), F.S.). *See, e.g., Crews v. State*, 130 So.3d 698 (Fla. 1st DCA 2013). However, depending upon the factual circumstances, a teacher, for example, may or may not have “custodial authority” over a student for purpose of this offense. “In *Hallberg v. State*, 649 So.2d 1355 (Fla.1994), the Florida Supreme Court held that ‘a teacher, without any teaching responsibility or extracurricular activity supervisory authority over a child during a summer recess, is not in a position of custodial authority’ for the purposes of the statute which forbids sexual activity with a child by a person in familial or custodial authority. Thus, ‘teachers are not, by reason of their chosen profession, custodians of their students at all times, particularly when school is recessed for the summer.’ *Id.* at 1357.” *Crews v. State*, 130 So.3d at 701.

The relevant sexual offenses are those listed in s. 775.21(4)(a)1., F.S. (offenses relevant to registration of sexual predators) or s. 943.0435(1)(a)1.a., F.S. (offenses relevant to registration of sexual offenders), but excluding s. 794.011(4)(g), F.S.,² and s. 810.145(8)(a)2., F.S.³ The bill reclassifies third degree felonies, second degree felonies, and first degree felonies.

Excluding s. 794.011(4)(g), F.S., and s. 810.145(8)(a)2., F.S. (offenses excluded by the bill), and offenses in which the offender is a minor (the bill requires the “authority figure” be an adult), the sexual offenses listed in the registry statutes that are third degree felonies, second degree felonies, or first degree felonies are:

- *Kidnapping (minor victim, offender not a parent)*: First degree felony (Level nine or ten). Section 787.01(2), F.S.
- *False imprisonment (minor victim, offender not a parent)*: Third degree felony (Level six). Section 787.02(2), F.S.
- *False imprisonment (child under 13 with sexual offense, offender not a parent)*: First degree felony (Level nine). Section 787.02(3), F.S.
- *Luring or enticing a child (offender 18+ with previous sexual offense and not a parent, victim under 12)*: Third degree felony (Not ranked: defaults to Level one). Section 787.025(2)(c), F.S.
- *Human trafficking (using coercion for commercial sexual activity)*: First degree felony (Level 8). Section 787.06(3)(b), F.S.
- *Human trafficking (using coercion for commercial sexual activity of any individual who is an unauthorized alien)*: First degree felony (Level nine). Section 787.06(3)(d), F.S.
- *Human trafficking (using coercion for commercial sexual activity, transfer or transport of any individual from outside this state to within this state)*: First degree felony (Level eight). Section 787.06(3)(f), F.S.
- *Human trafficking (for commercial sexual activity in which any child under 18 is involved)*: First degree felony (Level nine). Section 787.06(3)(g), F.S.
- *Sexual battery (victim 12+, no consent, special circumstance)*: First degree felony (Level nine). Section 794.011(4), F.S.
- *Sexual battery (victim 12+, no consent, no deadly force)*: Second degree felony (Level eight). Section 794.011(5), F.S.
- *Sexual battery (victim under 18, offender in a position of familial or custodial authority and solicits victim to engage in sexual battery)*: Third degree felony (Level six). Section 794.011(8)(a), F.S.
- *Sexual battery (victim 12+ but under 18, offender in a position of familial or custodial authority and engages in sexual battery)*: First degree felony (Level nine). Section 794.011(8)(b), F.S.
- *Sexual activity with certain minors (offender 24+ engages in sexual activity with victim 16 or 17)*: Second degree felony (Level six). Section 794.05, F.S.
- *Procuring person under 18 for prostitution*: Second degree felony (Level seven). Section 796.03, F.S.

² Section 794.011(4)(g), F.S., provides that it is a first degree felony for a law enforcement officer, correctional officer, or other specified officer or official to commit sexual battery upon a victim 12 years of age or older.

³ Section 810.145(8)(a)2., F.S., provides that it is a second degree felony for an adult employed by a school to commit an act of video voyeurism against a student of the school.

- *Selling or buying of minors into sex trafficking or prostitution (by parent, guardian, etc.):* First degree felony (Level nine). Section 796.035, F.S.
- *Lewd or lascivious battery:* Second degree felony (Level eight). Section 800.04(4), F.S.
- *Lewd or lascivious molestation (offender 18+ and victim age 12-15):* Second degree felony (Level seven). Section 800.04(5)(c), F.S.
- *Lewd or lascivious conduct (offender 18+):* Second degree felony (Level six). Section 800.04(6)(b), F.S.
- *Lewd or lascivious exhibition (offender 18+):* Second degree felony (Level five). Section 800.04(6)(c), F.S.
- *Video voyeurism (offender 18+ responsible for welfare of child under 16 or offender 24+ and victim under 16):* Second degree felony (Not ranked: defaults to Level one). Section 810.145(8)(a), F.S.
- *Video voyeurism (with previous voyeurism conviction):* Second degree felony (Level six). Section 810.145(8)(b), F.S.
- *Lewd or lascivious battery upon elderly/disabled:* Second degree felony (Level eight). Section 825.1025(2), F.S.
- *Lewd or lascivious molestation upon elderly/disabled:* Third degree felony (Level six). Section 825.1025(3), F.S.
- *Lewd or lascivious exhibition in presence of elderly/disabled:* Third degree felony (Level five). Section 825.1025(4), F.S.
- *Using a child in a sexual performance, or being a parent, guardian, or custodian of child and consenting to the participation of child in a sexual performance:* Second degree felony (Level six). Section 827.071(2), F.S.
- *Promoting a sexual performance by a child:* Second degree felony (Level six). Section 827.071(3), F.S.
- *Possession with intent to promote any picture, etc., which includes any sexual conduct by a child:* Second degree felony (Level five). Section 827.071(4), F.S.
- *Possession of any picture, etc., which includes any sexual conduct by a child:* Third degree felony (Level five). Section 827.071(5), F.S.
- *Selling, renting, loaning, giving away, distributing, transmitting, or showing any obscene material to a minor:* Third degree felony (Not ranked: defaults to Level one). Section 847.0133, F.S.
- *Computer pornography:* Third degree felony (Level six). Section 847.0135(2), F.S.
- *Using a computer to solicit, lure, entice, etc., a child to commit a sexual act or a parent to consent to a child's participation in a sexual act:* Third degree felony (Level seven). Section 847.0135(3), F.S.
- *Using a computer to solicit, lure, entice, etc., a child to commit a sexual act or a parent to consent to a child's participation in a sexual act (while misrepresenting one's age):* Second degree felony (Level seven). Section 847.0135(3), F.S.
- *Traveling to meet a minor to engage in sexual conduct with the minor:* Second degree felony (Level seven). Section 847.0135(4), F.S.
- *Committing certain lewd acts live over computer knowing the transmission is viewed by a victim under 16 (offender 18+):* Second degree felony (Level five). Section 847.0135(5), F.S.
- *Transmitting child pornography:* Third degree felony (Level five). Section 847.0137, F.S.
- *Transmitting material harmful to minors:* Third degree felony (Level five). Section 847.0138, F.S.

- *Selling or buying of minors*: First degree felony (Level nine). Section 847.0145, F.S.
- *Sexual misconduct with a juvenile offender*: Second degree felony (Not ranked: defaults to Level four). Section 985.701(1), F.S.

III. Effect of Proposed Changes:

The bill creates s. 775.0862, F.S., which provides the felony degree of a violation of an offense listed in s. 775.21(4)(a)1., F.S. (offenses relevant to registration of sexual predators), or s. 943.0435(1)(a)1.a., F.S. (offenses relevant to registration of sexual offenders), but excluding s. 794.011(4)(g), F.S. and s. 810.145(8)(a)2., F.S., shall be reclassified if the offense is committed by an “authority figure” of a “school” against a “student” of that school.

The bill provides the following definitions of relevant terms:

- “Authority figure” means a person over the age of 18 employed by, volunteering at, or under contract with a school.
- “School” has the same meaning as provided in s. 1003.01, F.S.,⁴ and includes a private school as defined in s. 1002.01, F.S.,⁵ a voluntary prekindergarten education program as described in s. 1002.53(3), F.S.,⁶ early learning programs, a public school as described in s. 402.3025(1), F.S.,⁷ the Florida School for the Deaf and the Blind, the Florida Virtual

⁴ Section 1003.01(2), F.S., defines “school” as an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

⁵ Section 1002.01(2), F.S., defines “private school” as a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(13), F.S., or that gives preemployment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005, F.S. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41, F.S.

⁶ Section 1002.53(3), F.S., provides that the parent of each child eligible for the Voluntary Prekindergarten Education Program under subsection (2) of the statute may enroll the child in one of the following programs:

- A school-year prekindergarten program delivered by a private prekindergarten provider under s. 1002.55, F.S.;
- A summer prekindergarten program delivered by a public school or private prekindergarten provider under s. 1002.61, F.S.;
- A school-year prekindergarten program delivered by a public school; or
- A specialized instructional services program for children who have disabilities, if the child has been evaluated and determined as eligible, has a current individual educational plan developed by the local school board, and is eligible for the program under s. 1002.66, F.S.

⁷ Section 402.3025(1)(a), F.S., provides (under the subtitle “public schools”) that the following programs for children shall not be deemed to be child care and shall not be subject to the provisions of ss. 402.301-402.319, F.S. (child care facilities):

- Programs for children in five-year-old kindergarten and grades one or above;
- Programs for children who are at least three years of age, but who are under five years of age, provided the programs are operated and staffed directly by the schools and provided the programs meet age-appropriate standards as adopted by the State Board of Education; and
- Programs for children under three years of age who are eligible for participation in the programs under the existing or successor provisions of Pub. L. No. 94-142 or Pub. L. No. 99-457, provided the programs are operated and staffed directly by the schools and provided the programs meet age-appropriate standards as adopted by the State Board of Education.

School as established under s. 1002.37, F.S., and a K-8 Virtual School as established under s. 1002.415, F.S., but does not include facilities dedicated exclusively to the education of adults.

- “Student” means a person under the age of 18 who is enrolled at a school.

Based on these definitions, it appears the only required nexus between the authority figure and the student is that they are at the same school (the student is enrolled at the school and the authority figure is employed by, volunteering at, or under contract with that school). There is no requirement the offense occur on the premises of the school or during the school year or the authority figure have any responsibility for or authority over the student by reason of the authority figure’s position.

The bill reclassifies the offense as follows:

- In the case of a third degree felony,⁸ the offense is reclassified to a second degree felony.⁹
- In the case of a second degree felony, the offense is reclassified to a first degree felony.¹⁰
- In the case of a first degree felony, the offense is reclassified to a life felony.¹¹

The bill also provides, for purposes of sentencing under ch. 921, F.S. (the Criminal Punishment Code), and determining incentive gain-time eligibility under ch. 944, F.S., a felony offense reclassified, as provided in the bill, is ranked one level above the ranking under s. 921.0022, F.S., or s. 921.0023, F.S., of the offense committed.

An example of this reclassification is lewd or lascivious battery (s. 800.04(4), F.S.). This offense is a second degree felony (punishable by up to 15 years in state prison) and is ranked in Level eight. As reclassified, this offense would be a first degree felony (punishable by up to 30 years in state prison) and ranked in Level nine.

The bill also amends s. 921.0022, F.S. (the offense severity ranking chart of the Criminal Punishment Code). Currently, this statute, in part, provides reclassification of the degree of the felony through the application of a statute specified in s. 921.0022, F.S., or any other law which provides an enhanced penalty for a felony offense, to any offense listed in the offense severity

Section 402.3025(1)(b), F.S., provides (under the subtitle “public schools”) that the following programs for children shall be deemed to be child care and shall be subject to the provisions of ss. 402.301-402.319, F.S.:

- Programs for children who are under five years of age when the programs are not operated and staffed directly by the schools; and
- Programs for children under three years of age who are not eligible for participation in the programs under existing or successor provisions of Pub. L. No. 94-142 or Pub. L. No. 99-457.

⁸ A third degree felony is punishable by up to five years in state prison, a fine of up to \$5,000, or prison and a fine.

Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082, F.S.

⁹ A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or prison and a fine.

Sections 775.082 and 775.083, F.S.

¹⁰ A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

¹¹ A life felony is generally punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment, a fine of up to \$15,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

ranking chart, shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023, F.S.¹² The bill adds reference to s. 775.0862, F.S.

The effective date of the bill is October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimated the original bill would have an insignificant prison bed impact. It does not appear the changes made to CS/SB 698 will impact that estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 775.0862 of the Florida Statutes.

¹² This statute ranks noncapital felonies not included in the chart based on a ranking assigned to their felony degree.

This bill substantially amends section 921.0022 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 31, 2014:

- Rewords the definition of “authority figure” (adult employed by, volunteering at, or under contract with a school);
- Substitutes the term “school” for “educational institutional” and defines the term (linking the definition to a definition in current law);
- Rewords the definition of “student” (a minor enrolled at school); and
- Excludes from the felony reclassification provisions of the bill video voyeurism committed by an adult employed by a school against a student of the school.

- B. **Amendments:**

None.