

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 698

INTRODUCER: Senator Stargel

SUBJECT: Sexual Misconduct with Students by Authority Figures

DATE: March 28, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ED</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 698 reclassifies the felony degree of a specified sexual offense committed by an “authority figure” of an education institution against a student enrolled in early learning or pre-K to 12th grade at the education institution. An “authority figure” is a school officer, teacher or other instructional person, an administrator or other school administrative person, a school volunteer, an educational support employee, or an education service provider employed by, under contact with, working at, or providing volunteer service to an educational institution.

**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.<sup>1</sup> The bill reclassifies the felony degree of a specified sexual offense committed by an “authority figure” of an education institution against a student enrolled in early learning or pre-K to 12th grade at the education institution.

The relevant sexual offenses are those listed in s. 775.21(4)(a)1., F.S. (offenses relevant to registration of sexual predators), but excluding s. 794.011(4)(g), F.S.,<sup>2</sup> or s. 943.0435(1)(a)1.a.,

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<sup>1</sup> 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.

<sup>2</sup> Sexual battery by a law enforcement officer, correctional officer, or other specified officer or official upon a victim 12 years of age or older.

F.S. (offenses relevant to registration of sexual offenders). The bill reclassifies third degree felonies, second degree felonies, and first degree felonies.

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 9 or 10). Section 787.01(2), F.S.
- *False imprisonment (minor victim, offender not a parent)*: Third degree felony (Level 6). Section 787.02(2), F.S.
- *False imprisonment (child under 13 with sexual offense, offender not a parent)*: First degree felony (Level 9). 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 1). 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 9). 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 8). 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 9). Section 787.06(3)(g), F.S.
- *Sexual battery (victim 12+, no consent, special circumstance)*: First degree felony (Level 9). Section 794.011(4), F.S.
- *Sexual battery (victim 12+, no consent, no deadly force)*: Second degree felony (Level 8). 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 6). 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 9). 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 6). Section 794.05, F.S.
- *Procuring person under 18 for prostitution*: Second degree felony (Level 7). Section 796.03, F.S.
- *Selling or buying of minors into sex trafficking or prostitution (by parent, guardian, etc.)*: First degree felony (Level 9). Section 796.035, F.S.
- *Lewd or lascivious battery*: Second degree felony (Level 8). Section 800.04(4), F.S.
- *Lewd or lascivious molestation (offender under 18 and victim under 12 or offender 18+ and victim age 12-15)*: Second degree felony (Level 7). Section 800.04(5)(c), F.S.
- *Lewd or lascivious molestation (offender under 18 and victim age 12-16)*: Third degree felony (Level 6). Section 800.04(5)(d), F.S.
- *Lewd or lascivious conduct (offender 18+)*: Second degree felony (Level 6). Section 800.04(6)(b), F.S.

- *Lewd or lascivious conduct (offender under 18)*: Third degree felony (Level 5). Section 800.04(7)(b), F.S.
- *Lewd or lascivious exhibition (offender 18+)*: Second degree felony (Level 5). Section 800.04(6)(c), F.S.
- *Lewd or lascivious exhibition (offender under 18)*: Third degree felony (Level 4). Section 800.04(7)(c), F.S.
- *Video voyeurism (offender 18+ responsible for welfare of child under 16, offender 18+ employed at a school and victim is a student, or offender 24+ and victim under 16)*: Third degree felony (Not ranked: defaults to Level 1). Section 810.145(8)(a), F.S.
- *Video voyeurism (with previous voyeurism conviction)*: Second degree felony (Level 6). Section 810.145(8)(b), F.S.
- *Lewd or lascivious battery upon elderly/disabled*: Second degree felony (Level 8). Section 825.1025(2), F.S.
- *Lewd or lascivious molestation upon elderly/disabled*: Third degree felony (Level 6). Section 825.1025(3), F.S.
- *Lewd or lascivious exhibition in presence of elderly/disabled*: Third degree felony (Level 5). 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 6). Section 827.071(2), F.S.
- *Promoting a sexual performance by a child*: Second degree felony (Level 6). 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 5). Section 827.071(4), F.S.
- *Possession of any picture, etc., which includes any sexual conduct by a child*: Third degree felony (Level 5). 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 1). Section 847.0133, F.S.
- *Computer pornography*: Third degree felony (Level 6). 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 7). 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 7). Section 847.0135(3), F.S.
- *Traveling to meet a minor to engage in sexual conduct with the minor*: Second degree felony (Level 7). 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 5). Section 847.0135(5), F.S.
- *Committing certain lewd acts live over a computer knowing the transmission is being viewed by a victim under 16 (offender under 18)*: Third degree felony (Level 4). Section 847.0135(5), F.S.
- *Transmitting child pornography*: Third degree felony (Level 5). Section 847.0137, F.S.
- *Transmitting material harmful to minors*: Third degree felony (Level 5). Section 847.0138, F.S.

- *Selling or buying of minors*: First degree felony (Level 9). Section 847.0145, F.S.
- *Sexual misconduct with a juvenile offender*: Second degree felony (Not ranked: defaults to Level 4). Section 985.701(1), F.S.

### III. Effect of Proposed Changes:

The bill creates s. 775.0862, F.S., which provides that 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), but excluding s. 794.011(4)(g), F.S.,<sup>3</sup> or s. 943.0435(1)(a)1.a., F.S. (offenses relevant to registration of sexual offenders), shall be reclassified if the offense is committed by an “authority figure” of an “educational institution” against a “student” of the educational institution.

The bill provides the following definitions of relevant terms:

- “Authority figure” means a school officer, a teacher or other instructional person, an administrator or other school administrative person, a school volunteer, an educational support employee, or an education service provider who is employed by, under contract with, working at, or providing volunteer services to an educational institution.
- “Educational institution” means an entity providing instructional programs of study by means of regular classes, activities, or courses, including virtual courses, to students in early learning programs or in prekindergarten through grade 12.
- “Student” means a child who is enrolled in early learning or prekindergarten through grade 12.

Based on these definitions, it appears that the only required nexus between the authority figure and the student is that they are at the same educational institution (the student is enrolled at the institution and the authority figure is employed, under contract with, working at, or providing volunteer services to the institution). There is no requirement that the offense occur on the premises of the educational institution or during the school year or that 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,<sup>4</sup> the offense is reclassified to a second degree felony.<sup>5</sup>
- In the case of a second degree felony, the offense is reclassified to a first degree felony.<sup>6</sup>
- In the case of a first degree felony, the offense is reclassified to a life felony.<sup>7</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> A third degree felony is punishable by up to 5 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

The bill also provides that, 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 that is 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 8. As reclassified, this offense would be a first degree felony (punishable by up to 30 years in state prison) and ranked in Level 9.

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 that reclassification of the degree of the felony through the application of a statute specified in s. 921.0022, F.S., or any other law that provides an enhanced penalty for a felony offense, to any offense listed in the offense severity ranking chart, shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023, F.S.<sup>8</sup> 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.

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<sup>8</sup> This statute ranks noncapital felonies not included in the chart based on a ranking assigned to their felony degree.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that bill will have an insignificant prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 775.0862 of the Florida Statutes.

This bill substantially amends section 921.0022 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.