

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 Fiscal Policy

BILL: CS/SB 486

INTRODUCER: Criminal Justice Committee and Senator Bradley and others

SUBJECT: Solicitation of Minors to Commit Lewd or Lascivious Acts

DATE: April 12, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Favorable
3.	<u>Parker</u>	<u>Yeatman</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 486 creates s. 794.053, F.S., which prohibits lewd or lascivious written solicitation of certain minors. Under the bill, a person 24 years of age or older who solicits a person who is 16 or 17 years of age in writing to commit a lewd and lascivious act commits the offense of lewd or lascivious solicitation, a felony of the third degree,¹ punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill amends s. 921.0022, F.S., ranking the offense on the offense severity ranking chart of the Criminal Punishment Code as a level 3 offense.

The bill may have a positive, indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2023.

II. Present Situation:

The Florida Supreme Court has held that the terms “lewd” and “lascivious” mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the perpetrator.² The words “lewd”

¹ A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082, 775.083, and 775.084, F.S.

² *Chesebrough v. State*, 255 So.2d 675 (Fla. 1971).

and “lascivious” behavior when used in a statute to define an offense has been held to have the same meaning, that is, an indulgence in lust, eager for sexual indulgence.³

Florida law currently contains a variety of statutes that prohibit acts relating to lewd or lascivious offenses.

Lewd or Lascivious Offenses Targeting Persons Under 16 Years of Age

Section 800.04, F.S., criminalizes various acts targeting persons under 16 years of age, including: lewd or lascivious battery;⁴ lewd or lascivious molestation;⁵ lewd or lascivious conduct;⁶ and lewd or lascivious exhibition.⁷

Lewd or Lascivious Conduct

A person who intentionally touches a person under 16 years of age in a lewd or lascivious manner or solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.⁸

An offender who is:

- Eighteen years of age or older who commits lewd or lascivious conduct commits a second degree felony.⁹
- Less than 18 years of age who commits lewd or lascivious conduct commits a third degree felony.¹⁰

The Florida Standard Jury Instructions for soliciting a person under 16 years of age to commit a lewd or lascivious act provides that to “solicit” means to command, encourage, hire, or request another person to engage in specific conduct.¹¹

³ *Buchanan v. State*, 111 So.2d 51 (Fla. 1st DCA 1959).

⁴ Section 800.04(4), F.S., defines lewd or lascivious battery as engaging in sexual activity with a person 12 years or older but less than 16 years of age; or encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity. An offender who commits lewd or lascivious battery commits a felony of the second degree.

⁵ Section 800.04(5), F.S., defines lewd or lascivious molestation as a person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

⁶ Section 800.04(6), F.S.

⁷ Section 800.04(7), F.S., defines lewd or lascivious exhibition as a person who intentionally masturbates; intentionally exposes the genitals in a lewd or lascivious manner; or intentionally commits any sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition. An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, generally punishable by not more than fifteen years in state prison. An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree.

⁸ *Supra*, Note 6.

⁹ A felony of the second degree is generally punishable by a term of imprisonment not exceeding 15 years, as provided in s. 775.082, s. 775.083, and s. 775.084, F.S.

¹⁰ A felony of the third degree is generally punishable by a term of imprisonment not exceeding 5 years, as provided in s. 775.082, s. 775.083, and s. 775.084, F.S.

¹¹ Fla. Std. Jury Instr. (Crim.) 11.10(d), Lewd or Lascivious Conduct, s. 800.04(6), F.S.

Prohibited Computer Usage

Section 847.0135, F.S., in part, prohibits certain solicitation offenses. Specifically, it provides that it is a third degree felony for any person to knowingly use a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, *solicit*, lure, or entice or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in any unlawful sexual conduct with a child or with another person believed to be a child.¹²

Unlawful Acts with Persons 16 and 17 Years of Age

Section 794.05, F.S., provides that a person who is 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a second degree felony.¹³ A person convicted of unlawful sexual activity with a minor must register as a sexual offender under s. 943.0435, F.S.

“Sexual activity” means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object. Sexual activity does not include an act done for a bona fide medical purpose.

Evidence of a victim’s prior sexual conduct is not relevant in a prosecution for unlawful sexual activity with a minor. If an offender’s unlawful sexual activity with a minor directly results in the victim giving birth to a child, paternity of the child must be determined under ch. 742, F.S., and the offender must pay child support as provided in ch. 61, F.S.

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹⁴ are listed in a single offense severity ranking chart (OSRC),¹⁵ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense, listed in the OSRC is assigned a level according to the severity of the offense.^{16, 17} A person’s primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each current

¹² Section 847.0135(3), F.S., A person misrepresenting his or her age commits a second degree felony.

¹³ Section 794.05, F.S.

¹⁴ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.

¹⁵ Section 921.0022, F.S.

¹⁶ Section 921.0022(2) and (3)(e), F.S.

¹⁷ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third degree felony defaults to a level 1; an unlisted second degree felony defaults to a level 4; an unlisted first degree felony defaults to a level 7; an unlisted first degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. Section 921.0023, F.S.

offense.^{18, 19} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.²⁰

III. Effect of Proposed Changes:

This bill creates s. 794.053, F.S., which prohibits the lewd or lascivious written solicitation of certain minors. Under the bill, a person 24 years of age or older who solicits a person who is 16 or 17 years of age in writing to commit a lewd and lascivious act commits the offense of lewd or lascivious solicitation, a felony of the third degree,²¹ punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill amends s. 921.0022, F.S., ranking the offense on the offense severity chart of the Criminal Punishment Code as a level 3 offense.

This newly created section is not a registerable offense on the sex offender registry.

The bill is effective October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁸ Sections 921.0022 and 921.0024, F.S.

¹⁹ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. Section 921.0024(2), F.S.

²⁰ If a person scores more than 44 points or fewer, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. *Id.*

²¹ A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082, 775.083, and 775.084, F.S.

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, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).²²

The EDR provided the following information relevant to its estimate:

In Fiscal Year 2018-19, the incarceration rate for a Level 3, 3rd degree felony was 9.5%, and in Fiscal Year 2019-20 the incarceration rate was 8.8%. In Fiscal Year 2020-21, the incarceration rate for a Level 3, 3rd degree felony was 8.7%, and in Fiscal Year 2021-22 the incarceration rate was 9.6%.

Section 847.0135, F.S., has multiple felonies that share similarities with the language added by this bill. A Level 6, 3rd degree felony exists for a person who uses a computer to facilitate sexual conduct of or with a minor, or the visual depiction of such conduct. This does not state an age for the offender, nor does it state an age for the minor, other than the person would be under 18 years of age. A Level 7, 3rd degree felony exists for the solicitation of a child, via a computer service, to commit an unlawful sex act. This also does not provide an age range for the offender or the minor. Finally, there is a Level 5, 2nd degree felony for lewd or lascivious exhibition using a computer, where the offender is 18 years or older, and the minor is less than 16 years old. None of these three felonies fit the specified age ranges, nor does the language under current statute specify different ways an offender might contact a minor through writing, but the number of new commitments for these offenses could provide supplemental information on the potential number of offenders.

According to the Department of Corrections, in Fiscal Year 2018-19, there were 49 new commitments for the felonies described above, and there were 32 new commitments in Fiscal Year 2019-20. In Fiscal Year 2020-21, there were 18 new commitments, and in Fiscal Year 2021-22, there were 31 new commitments. It is not known how the offender pool might be expanded or how prison admissions might be impacted by this new language.

²² CS/SB 486 – *Solicitation of Minors to Commit Lewd or Lascivious Acts (Preliminary Analysis)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.0022 of the Florida Statutes.

This bill creates section 794.053 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 13, 2023:

The committee substitute:

- Punishes the lewd or lascivious written solicitation of certain minors. A person 24 years of age or older who solicits a person who is 16 or 17 years of age in writing to commit a lewd or lascivious act commits a felony of the third degree.
- Provides that the offense is ranked as a level 3 on the offense severity ranking chart.
- As amended, this offense is not a registerable offense on the sex offender registry.

- B. **Amendments:**

None.