

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: SB 1220

INTRODUCER: Senator Martin

SUBJECT: Schemes to Defraud

DATE: February 26, 2024

REVISED: _____

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

I. Summary:

SB 1220 amends s. 817.034, F.S., to reclassify the penalty for committing specified offenses of schemes to defraud against a person 65 years of age or older, or against a person with mental or physical disabilities.

- A first degree misdemeanor is reclassified to a third degree felony;
- A third degree felony is reclassified to a second degree felony;
- A second degree felony is reclassified to a first degree felony; and
- A first degree felony is reclassified to a life felony.

The bill adds “endorsements of nonconsenting parties” to the definition of “scheme to defraud.”

The bill provides that a person whose image or likeness is used without his or her consent in a scheme to defraud may file a civil action in a court of competent jurisdiction to recover damages caused by the use of his or her image or likeness.

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

The bill provides an effective date of October 1, 2024.

II. Present Situation:

Section 817.034(3)(d), F.S., defines “scheme to defraud” as a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.¹

¹ Section 817.034(3)(d), F.S.

Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:²

- Property obtained that has an aggregate value of \$50,000 or more, the violator is guilty of a first degree felony.
- Property obtained that has an aggregate value of \$20,000 or more, but less than \$50,000, the violator is guilty of a second degree felony.³
- Property obtained that has an aggregate value of less than \$20,000, the violator is guilty of a third degree felony.⁴

Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with intent to obtain property from that person is guilty, for each such act of communication, of communications fraud, punishable as follows:⁵

- If the value of property obtained or endeavored to be obtained by the communication is valued at \$300 or more, the violator is guilty of a third degree felony.
- If the value of the property obtained or endeavored to be obtained by the communication is valued at less than \$300, the violator is guilty of a first degree misdemeanor.⁶

Currently, there is no reclassification for scheme to defraud if the offense is against a person 65 years of age or older or against a person with a mental or physical disability.

Reclassification and Ranking

Florida currently has various statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.⁷

² Section 817.034(4)(a), F.S.

³ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁴ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

⁵ Section 817.034(4)(b), F.S.

⁶ A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year. Sections 775.082 and 775.083, F.S.

⁷ Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense.

Section 775.083, F.S., provides the following maximum fines; \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

Criminal Punishment Code

The Florida Criminal Punishment Code is a set of guidelines that judges use to determine the appropriate sentence for a criminal offense in Florida.⁸ The Criminal Punishment Code⁹ is Florida's primary sentencing policy. If the offense is not listed in the chart, then by default the ranking is based on the felony degree of the offense as explained in s 921.0023, F.S.¹⁰

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹¹ Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses.

The lowest permissible sentence is any non-state prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹² Absent mitigation,¹³ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁴

⁸ Florida Department of Corrections, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, <https://fdc.myflorida.com/pub/scoresheet/Scoresheet%20Preparation%20Manual%202021.pdf> (Last visited January 17, 2024).

⁹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹⁰ Section 921.0023.

¹¹ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹² Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹³ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁴ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

III. Effect of Proposed Changes:

The bill amends s. 817.034, F.S., to reclassify the penalty for committing specified offenses of schemes to defraud against a person 65 years of age or older, or against a person with mental or physical disabilities.

- A first degree misdemeanor¹⁵ is reclassified to a third degree felony;¹⁶
- A third degree felony is reclassified to a second degree felony;¹⁷
- A second degree felony is reclassified to a first degree felony; and
- A first degree felony is reclassified to a life felony.

The bill adds “endorsements of nonconsenting parties” to the definition of “scheme to defraud.”

The bill provides that a person whose image or likeness is used without his or her consent in a scheme to defraud may file a civil action in a court of competent jurisdiction to recover damages caused by the use of his or her image or likeness.

Technical changes have been made throughout the bill to streamline language, but do not change the meaning.

The bill provides an effective date of October 1, 2024.

IV. 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.

¹⁵ A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year. Sections 775.082 and 775.083, F.S.

¹⁶ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁷ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, 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 determined the bill may have a positive indeterminate impact on prison beds (unquantifiable increase in prison beds) due to reclassifying certain scheme to defraud offenses committed against persons 65 years of age or older or persons with certain disabilities.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.034 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁸ Office of Economic and Demographic Research *SB 1220*,
<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB1220.pdf>.