

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

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BILL #: [HB 777](#)

TITLE: Age as an Element of a Criminal Offense

SPONSOR(S): Plakon

COMPANION BILL: [SB 1136](#) (Collins)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Criminal Justice](#)

17 Y, 0 N



[Judiciary](#)

SUMMARY

Effect of the Bill:

HB 777 increases the penalty for offenses of luring or enticing a child under the age of 12 and ranks such offenses on Level 7 of the offense severity ranking chart. The bill also prohibits certain age-related defenses from being raised in a prosecution for any offense related to kidnapping, false imprisonment, luring or enticing a child, interference with custody, removing minors from the state or concealing minors contrary to state agency order or court order, human trafficking, or human smuggling, when the victim's age is an element of the offense.

Fiscal or Economic Impact:

The bill may have an indeterminate positive impact on jail and prison beds by increasing penalties for offenses of luring and enticing a child under the age of 12 and prohibiting certain defenses to such an offense and similar offenses, which may result in more jail and prison admissions and offenders being sentenced to longer terms of incarceration.

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ANALYSIS

EFFECT OF THE BILL:

HB 777 increases the penalty for offenses of [luring or enticing a child](#) under the age of 12. Under the bill, the penalty for an offense of luring or enticing a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose is increased from a:

- First-degree misdemeanor to a third-degree felony for a first offense.
- From a third-degree felony to a second-degree felony for a second or subsequent offense.
- From a third-degree felony to a second-degree felony for a violation committed by an offender with a previous conviction for a violation of ch. 794, F.S., relating to sexual battery, [s. 800.04, F.S.](#), relating to lewd or lascivious offenses committed on or in the presence of persons less than 16 years of age, or [s. 847.0135\(5\), F.S.](#), relating to lewd or lascivious exhibition using a computer, or a violation of a similar law in another jurisdiction. (Section [2](#))

The bill ranks any violation of [s. 787.025, F.S.](#), relating to luring or enticing a child, as a level 7 offense on the [offense severity ranking chart](#). (Section [3](#))

The bill prohibits the following from being raised as a defense in a prosecution for any violation of ch. 787, F.S., relating to kidnapping, false imprisonment, luring or enticing a child, interference with custody, removing minors from the state or concealing minors contrary to state agency order or court order, human trafficking, and human smuggling, when the victim's age is an element of the offense:

- The defendant's ignorance of the victim's age.
- The misrepresentation of the victim's age by any person.
- The defendant's bona fide belief of the victim's age. (Section [1](#))

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This prohibition on age-related defenses does not apply to a violation of [s. 787.30, F.S.](#), as a person who employs another person who is under 21 years of age to work in an adult entertainment establishment is required to carefully check specified identification presented by the person and to act in good faith and reliance upon such a representation and the appearance of the person in determining that he or she is 21 years of age or older. (Section [1](#))

The bill provides an effective date of October 1, 2025. (Section [4](#))

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate positive impact on prison beds by increasing the penalty for luring or enticing a child under the age of 12 and prohibiting certain defenses to such an offense and other similar offenses, which may result in more prison admissions and offenders being sentenced to longer terms of incarceration.

LOCAL GOVERNMENT:

The bill may have an indeterminate positive impact on jail beds by increasing the penalty for luring or enticing of a child under the age of 12 and prohibiting certain defenses to such an offense and other similar offenses, which may result in more jail admissions and offenders being sentenced to longer terms of incarceration.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Luring or Enticing a Child

Under [s. 787.025\(2\)\(a\), F.S.](#), a person 18 years of age or older commits a first degree misdemeanor¹ if he or she intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose.² A person who commits a second or subsequent violation or commits a violation after having been previously convicted of a violation of ch. 794, F.S., relating to sexual battery, [s. 800.04, F.S.](#), relating to lewd or lascivious offenses committed on or in the presence of persons less than 16 years of age, or [s. 847.0135\(5\), F.S.](#), relating to lewd or lascivious exhibition using a computer, or a violation of a similar law in another jurisdiction, commits a third-degree felony.^{3, 4}

It is an affirmative defense in a prosecution for such an offense if:

- The defendant reasonably believed that his or her action was necessary to prevent the child from being seriously injured.
- The defendant lured or enticed, or attempted to lure or entice, the child under the age of 12 into a structure, dwelling, or conveyance for a lawful purpose.
- The defendant's actions were reasonable under the circumstances and he or she did not have any intent to harm the health, safety, or welfare of the child.⁵

Kidnapping

¹ A first-degree misdemeanor is punishable by a term of imprisonment not to exceed one year and a \$1,000 fine. S. [775.082, F.S.](#), and s. [775.083, F.S.](#)

² For "other than a lawful purpose" may be shown by proving that the person lured or enticed the child for an illegal purpose, i.e. with the intent to violate Florida law by committing a crime. *State v. Brake*, 796 So. 2d 522, 529 (Fla. 2001).

³ S. [787.025\(2\)\(b\) and \(c\), F.S.](#)

⁴ A third-degree felony is punishable by up to five years' imprisonment and a fine of \$5,000. S. [775.082, F.S.](#), s. [775.083, F.S.](#), and s. [775.084, F.S.](#)

⁵ S. [787.025\(3\), F.S.](#)

Under [s. 787.01\(1\), F.S.](#), “kidnapping” means forcibly, secretly, or by threat confining,⁶ abducting, or imprisoning another person against his or her will and without lawful authority, with intent to:

- Hold the victim for ransom or reward or as a shield or hostage.
- Commit or facilitate the commission of any felony.
- Inflict bodily harm upon or to terrorize the victim or another person.
- Interfere with the performance of any governmental or political function.

A person who kidnaps another person is guilty of a first-degree felony,⁷ punishable by imprisonment for a term of years not exceeding life.⁸

A person who kidnaps a child under the age of 13 and who, in the course of committing the kidnapping, also commits on or more of the following, is guilty of a life felony:^{9, 10}

- Aggravated child abuse.¹¹
- Sexual battery against the child.¹²
- Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition.¹³
- A violation relating to prostitution of the child.¹⁴
- Exploitation of the child or allowing the child to be exploited.¹⁵
- A violation relating to human trafficking.¹⁶

False Imprisonment

Section [787.02\(2\), F.S.](#), prohibits a person from falsely imprisoning¹⁷ another person as a third-degree felony.

A person who falsely imprisons a child under the age of 13 and who, in the course of falsely imprisoning the child, commits any of the following offenses, is guilty of a first-degree felony, punishable by imprisonment for a term not exceeding life:¹⁸

- Aggravated child abuse.¹⁹
- Sexual battery against the child.²⁰
- Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition.²¹
- A violation relating to prostitution of the child.²²
- Exploitation of the child or allowing the child to be exploited.²³

⁶ Confinement of a child under the age of 13 is against his or her will if such confinement is without the consent of his or her parent or legal guardian. S. [787.01\(1\)\(b\), F.S.](#)

⁷ A first-degree felony is otherwise punishable by up to 30 years’ imprisonment and a fine of \$10,000. S. [775.082, F.S.](#), s. [775.083, F.S.](#), and s. [775.084, F.S.](#)

⁸ S. [787.01\(2\), F.S.](#)

⁹ S. [787.01\(3\)\(a\), F.S.](#); The offense is ranked as a Level 10 offense on the offense severity ranking chart (OSRC). S. [921.0022, F.S.](#)

¹⁰ A life felony is punishable for a term of imprisonment up to life and a \$15,000 fine. S. [775.082, F.S.](#), s. [775.083, F.S.](#), and s. [775.084, F.S.](#)

¹¹ S. [827.03, F.S.](#)

¹² Ch. 794, F.S.

¹³ S. [800.04, F.S.](#), and s. [847.0135\(5\), F.S.](#)

¹⁴ Former s. 796.03, F.S., and former s. 796.04, F.S.

¹⁵ S. [450.151, F.S.](#)

¹⁶ S. [787.06\(3\)\(g\), F.S.](#)

¹⁷ “False imprisonment” means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. Confinement of a child under the age of 13 is against his or her will if such confinement is without the consent of his or her parent or legal guardian. S. [787.02\(1\), F.S.](#)

¹⁸ S. [787.02\(3\)\(a\), F.S.](#); The offense is ranked as a Level 9 offense on the OSRC.

¹⁹ S. [827.03, F.S.](#)

²⁰ Ch. 794, F.S.

²¹ S. [800.04, F.S.](#), and s. [847.0135\(5\), F.S.](#)

²² Former s. 796.03, F.S., and former s. 796.04, F.S.

²³ S. [450.151, F.S.](#)

- A violation relating to human trafficking.²⁴

Interference with Custody

Section [787.03\(1\), F.S.](#), prohibits a person from knowingly or recklessly taking or enticing, or aiding, abetting, hiring, or otherwise procuring another to take or entice, any minor or any incompetent person from the custody of the minor's or incompetent person's parent, his or her guardian, a public agency having the lawful charge of the minor or incompetent person, or any other lawful custodian without lawful authority. A violation of this prohibition is a third-degree felony.²⁵

Additionally, in the absence of a court order determining rights to custody or visitation with any minor or with any incompetent person, any parent of the minor or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of the minor or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that minor or incompetent person within or without the state with malicious intent to deprive another person of his or her right to custody of the minor or incompetent person commits a third-degree felony.²⁶

In a prosecution for a violation of [s. 787.03, F.S.](#), proof that a person has not attained the age of 18 years creates the presumption that the defendant knew the minor's age or acted in reckless disregard thereof.²⁷

Removing Minors from the State or Concealing Minors Contrary to State Agency Order or Court Order

Section [787.04, F.S.](#), prohibits a person from leading, taking, enticing, or removing a minor beyond the limits of this state, or concealing the location of a minor:

- In violation of a court order that he or she has personal knowledge of.²⁸
- With criminal intent, during the pendency of any action or proceeding affecting custody of the minor, after having received notice as required by law of the pendency of the action or proceeding, without the permission of the court in which the action or proceeding is pending.²⁹
- Knowingly and willfully, during the pendency of a dependency proceeding affecting such minor or during the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of such minor, after having received actual or constructive notice of the pendency of such investigation, action, or proceeding and without the permission of the state agency or court in which the investigation, action, or proceeding is pending.³⁰

Additionally, a person, who has carried beyond the limits of this state any minor whose custody is involved in any action or proceeding pending in this state pursuant to the order of the court in which the action or proceeding is pending or pursuant to the permission of the court, is prohibited from thereafter failing to produce the minor in the court or deliver the minor to the person designated by the court.³¹

Any violation of the foregoing provisions in [s. 787.04, F.S.](#), is a third-degree felony.

Human Trafficking

²⁴ S. [787.06\(3\)\(g\), F.S.](#)

²⁵ The offense is ranked as a Level 4 offense on the OSRC.

²⁶ S. [787.03\(2\), F.S.](#)

²⁷ S. [787.03\(5\), F.S.](#)

²⁸ S. [787.04\(1\), F.S.](#); The offense is ranked as a Level 2 offense on the OSRC.

²⁹ S. [787.04\(2\), F.S.](#); The offense is ranked as a Level 4 offense on the OSRC.

³⁰ S. [787.04\(3\), F.S.](#); The offense is ranked as a Level 4 offense on the OSRC.

³¹ S. [787.04\(4\), F.S.](#)

A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking,³² attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;³³
- With or of a child or person believed to be a child younger than 18;³⁴ or
- If for commercial sexual activity, with a mentally defective³⁵ or mentally incapacitated³⁶ person.³⁷

Any human trafficking offense committed upon a child younger than 18 years of age or an adult believed by the defendant to be a child younger than 18 years of age for labor or services is punishable as a first-degree felony.³⁸ However, if a child younger than 18 years of age or an adult believed by the defendant to be a child younger than 18 years of age, or a person who is mentally defective or mentally incapacitated, is involved in human trafficking for the purposes of commercial sexual activity, the defendant commits a life felony.³⁹

A defendant's ignorance of the victim's age, the victim's misrepresentation of his or her age, or a defendant's bona fide belief of the victim's age cannot be raised as a defense in a prosecution for a human trafficking offense.⁴⁰

Human Smuggling

Section [787.07, F.S.](#),⁴¹ prohibits a person from knowingly and willfully transporting an individual into this state who the person knows, or reasonably should know, has entered the United States illegally from another country. A violation of this prohibition is a third-degree felony.⁴² However, a person who transports a minor into this state in violation of this prohibition commits a second-degree felony.^{43, 44}

Employing Persons Under the Age of 21 Years in Adult Entertainment Establishments

Section [787.30\(2\)\(a\), F.S.](#), prohibits an owner, manager, employee, or contractor of an adult entertainment establishment⁴⁵ from knowingly employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 years to perform or work in an adult entertainment establishment. A violation of this prohibition is a first-degree misdemeanor.

This section also prohibits an owner, manager, employee, or contractor of an adult entertainment establishment from knowingly employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 years to perform or work while nude in an adult entertainment establishment. A violation of this prohibition is a second-degree felony.⁴⁶

³² "Human trafficking" means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person. S. [787.06\(2\)\(d\), F.S.](#)

³³ S. [787.06\(3\)\(a\)2., \(b\), \(c\)2., \(d\), \(e\)2., and \(f\)2., F.S.](#)

³⁴ S. [787.06\(3\)\(a\)1., F.S.](#); s. [787.06\(3\)\(c\)1., F.S.](#); s. [787.06\(3\)\(e\)1., F.S.](#); s. [787.06\(3\)\(f\)1., F.S.](#), the offense is ranked as a Level 9 offense on the OSRC; and s. [787.06\(3\)\(g\), F.S.](#)

³⁵ "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. [794.011\(1\)\(c\), F.S.](#)

³⁶ "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. S. [794.011\(1\)\(d\), F.S.](#)

³⁷ S. [787.06\(3\)\(g\), F.S.](#)

³⁸ S. [787.06\(3\)\(a\)1., F.S.](#), the offense is ranked as a Level 8 offense on the OSRC; s. [787.06\(3\)\(c\)1., F.S.](#), the offense is ranked as a Level 9 offense on the OSRC; and s. [787.06\(3\)\(e\)1., F.S.](#), the offense is ranked as a Level 8 on the OSRC.

³⁹ S. [787.06\(3\)\(g\), F.S.](#); The offense is ranked as a Level 10 offense on the OSRC.

⁴⁰ S. [787.06\(9\), F.S.](#)

⁴¹ Section [787.07, F.S.](#), has been preliminarily enjoined by the United States District Court for the Southern District of Florida, based on field and conflict preemption. *Farmworker Ass'n of Fla., Inc. v. Moody*, 734 F. Supp. 3d 1311 (S.D. Fla. 2024).

⁴² S. [787.07\(1\), F.S.](#)

⁴³ S. [787.07\(3\), F.S.](#)

⁴⁴ A second-degree felony is punishable by up to fifteen years' imprisonment and a fine of \$10,000. S. [775.082, F.S.](#), s. [775.083, F.S.](#), and s. [775.084, F.S.](#)

⁴⁵ "Adult entertainment establishment" includes adult bookstores, adult theaters, special cabaret, and unlicensed massage establishments. S. [847.001\(2\), F.S.](#)

⁴⁶ S. [787.30\(2\)\(b\), F.S.](#)

Any owner, manager, employee, or contractor of an adult entertainment establishment who employs a person to perform as an entertainer or work in any capacity in an adult entertainment establishment is required to carefully check a driver license, identification card, passport, or United States Uniformed Services identification card presented by the person and to act in good faith and reliance upon such a representation and the appearance of the person in determining that he or she is 21 years of age or older.⁴⁷

A person prosecuted for violating a prohibition related to employing a person under 21 years of age in an adult entertainment establishment may not raise ignorance of another person's age or a person's misrepresentation of his or her age as a defense.⁴⁸

Prohibited Computer Usage

Under [s. 847.0135\(3\), F.S.](#), a person commits a third-degree felony if he or she knowingly uses 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 child⁴⁹ or another person believed by the offender to be a child, to commit any illegal act described in ch. 794, F.S., relating to sexual battery, ch. 800, F.S., relating to lewdness and indecent exposure, or ch. 827, F.S., relating to abuse of children, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the offender to be a child; or
- Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed by the offender to be the same, to consent to such child's participation in any act described in ch. 794, F.S., ch. 800, F.S., or ch. 827, F.S., or to otherwise engage in any sexual conduct.⁵⁰

Offense Severity Ranking Chart

Felony offenses which are subject to the Criminal Punishment Code⁵¹ are listed in a single offense severity ranking chart (OSRC),⁵² 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.^{53, 54} 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 offense.^{55, 56} 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.⁵⁷

⁴⁷ S. [787.30\(3\), F.S.](#)

⁴⁸ S. [787.30\(4\), F.S.](#)

⁴⁹ "Child" means any person, whose identity is known or unknown, younger than 18 years of age. S. [847.001\(10\), F.S.](#)

⁵⁰ The offense is ranked as a Level 7 offense on the OSRC.

⁵¹ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. [921.002, F.S.](#)

⁵² S. [921.0022, F.S.](#)

⁵³ S. [921.0022\(2\), F.S.](#)

⁵⁴ 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. S. [921.0023, F.S.](#)

⁵⁵ S. [921.0022, F.S.](#) and s. [921.0024, F.S.](#)

⁵⁶ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. [921.0024\(1\), F.S.](#)

⁵⁷ If a person scores more than 44 points, 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. S. [921.0024\(2\), F.S.](#)

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Criminal Justice Subcommittee	17 Y, 0 N	3/12/2025	Hall	Leshko
Judiciary Committee				