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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: CS/HB 1317

RELATING TO: Crimes Against Minors

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative Cusack

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 0
 - (2) HEALTHY COMMUNITIES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The kidnapping statute currently provides for enhanced penalties when an offender commits a violent offense in the course of the kidnapping and the victim is under the age of 13. The committee substitute amends this section to apply the enhanced penalties to kidnapping offenses committed against a child under the age of 16. The committee substitute makes corresponding changes to the false imprisonment statute.

Section 787.025, F.S. currently prohibits an offender who has previously been convicted of a sexual offense from luring or enticing a child under the age of 12 into a structure, dwelling or conveyance for other than a lawful purpose. The bill amends this statute to remove the requirement that the offender has previously been convicted of a sexual offense. The bill also raises the age of the children protected from those under the age of 12 to those under the age of 16 and raises the degree of the offense from a third degree felony to a second degree felony.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Kidnapping

Section 787.01 prohibits the offense of kidnapping, a first degree felony, which is defined as follows:

The term kidnapping means forcibly, secretly or by threat confining, abducting or imprisoning another person against her or his will and without lawful authority, with intent to:

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

Confinement of a child under the age of 13 is against her or his will within the meaning of this subsection if such confinement is without the consent of her or his parent or legal guardian.

The section also provides that the offense of kidnapping is a life felony when the victim is a child under the age of 13 and when in the course of committing the kidnapping, the offender commits one or more of the following offenses:

1. Aggravated child abuse, as defined in s. 827.03.
2. Sexual battery, as defined in chapter 794, against the child.
3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04.
4. A violation of s. 796.03 or 796.04, relating to prostitution.
5. Exploitation of the child or allowing the child to be exploited in violation of s. 450.151.

False Imprisonment

False imprisonment is defined as “forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.” The section provides that the confinement of a child under the age of 13 is considered against her or his will if the confinement is without the consent of the victim’s parent or legal guardian. The section also provides for enhanced penalties for false imprisonment if it is committed on a child under the age of 13 and in the course of offense, the offender commits one of the following offenses:

1. Aggravated child abuse, as defined in s. 827.03.
2. Sexual battery, as defined in chapter 794, against the child.
3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04.
4. A violation of s. 796.03 or 796.04, relating to prostitution.
5. Exploitation of the child or allowing the child to be exploited in violation of s. 450.151.

Luring or Enticing a Child

Section 787.025, F.S., provides that a person over the age of 18 who, having been previously convicted of a sexual offense under Chapter 794 or s. 800.04, F.S., or of a similar offense in another jurisdiction, intentionally lures or entices a child under the age of 12 into a structure¹, dwelling², or conveyance³ for other than a lawful purpose commits a third degree felony.

The section further provides that the luring or enticing of a child under the age of 12 into a structure, dwelling or conveyance without the consent of the child’s parent or legal guardian shall be prima facie evidence of other than a lawful purpose. The section also provides that it is an affirmative defense to a prosecution for this offense that:

1. the person reasonably believed that his or her action was necessary to prevent the child from being seriously injured;
2. the person 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 or
3. the person’s actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the child.

¹ The term “structure” is defined as “a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.” Sec. 787.025(1)(a), F.S.

² The term “dwelling” is defined as a “building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging together therein at night, together with the curtilage thereof.” Sec. 787.025(1)(b), F.S.

³ The term “conveyance” is defined as any motor vehicle, ship, vessel, railroad car, trailer, aircraft or sleeping car”. Sec. 787.025(1)(c), F.S.

"An 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question." State v. Cohen, 568 So.2d 49, 51 (Fla.1990). A defendant has the burden of initially offering evidence to establish an affirmative defense, after which the burden shifts to the state to disprove the defense beyond a reasonable doubt. Hansman v. State, 679 So.2d 1216, 1217 (Fla. 4th DCA 1996).

In Brake v. State, 746 So. 2d 527 (Fla. 2nd DCA 1999), the Second District Court of Appeal found s. 787.025, F.S., to be unconstitutionally vague. The Court found that the term "other than for a lawful purpose" failed to give "persons of common intelligence adequate warning of the proscribed conduct". The court noted that one way that the legislature could cure this problem is by "leaving out the offending language and making it illegal for a convicted sex offender over the age of eighteen...to lure or entice a child under twelve into a structure, dwelling, or conveyance without the permission of a parent or guardian." Id. at 529-530.

The Florida Supreme Court overturned the Second District and ruled that the statute is not unconstitutional. The court ruled that the requirement that the offender lured or enticed a child "for other than a lawful purpose" can be construed to require that the state prove "that the defendant lured or enticed a child into the structure, dwelling or conveyance for an 'illegal' purpose, i.e. with intent to violate Florida law by committing a crime." State v. Brake, 796 So.2d 522 (Fla. 2001). However, the court ruled that the part of the statute which provides that luring a child "without the consent of the child's parent or legal guardian shall be prima facie evidence of other than a lawful purpose" created a unconstitutional statutory presumption. The court explained its holding as follows:

In the instant case, the statute permits the State to prove the mens rea element of the offense ("for other than a lawful purpose") by proving lack of parental consent for the child to enter the structure, dwelling or conveyance with the defendant. We cannot say with substantial assurance that a defendant's unlawful intent can be so presumed. For example, a neighbor who invited a child into their house for a perfectly innocent reason is not likely to seek parental permission. Thus, section 787.025(2)(b) must be deleted as an unconstitutional statutory presumption.

Id. at 529.

C. EFFECT OF PROPOSED CHANGES:

Kidnapping and False Imprisonment

The bill amends the kidnapping statute which currently provides for enhanced penalties for kidnapping committed under certain circumstances on a child under the age of 13 to raise the age of the children being protected to those under the age of 16. The bill also amends the part of the kidnapping statute which provides that confinement of a child under the age of 13 is against his or her will if the confinement is without the consent of the child's parent or legal guardian to apply this presumption to children under the age of 16. The bill makes corresponding changes to the false imprisonment statute.

Luring or Enticing a Child

The bill also amends the section prohibiting a person who has previously been convicted of a sexual offense from luring or enticing a child under age of 12 into a structure or dwelling for other than a lawful purpose. The bill raises the age of the children protected under the section to those under the age of 16. The bill also removes the requirement that the offender had previously been

convicted of a sexual offense. The bill also increases the degree of crime from a third degree felony to a second degree felony.

To summarize, the bill will require the state to prove that any person over the age of 18 intentionally lured, enticed or attempted to lure or entice a child under the age of 15 into a structure, dwelling or conveyance for an illegal purpose. Because of the holding in Brake, discussed above, the state will not be able to use the presumption contained in the statute that provides that proof that the offender lured or enticed the victim without the permission of the child's parent or legal guardian shall be prima facie evidence that the victim acted for an unlawful purpose. Further, the state will apparently be required to prove the specific nature of the illegal purpose.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has indicated that the provisions of the committee substitute will have an insignificant prison bed impact on the Department of Corrections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill was substantially different that the committee substitute and amended the statute relating to lewd and lascivious offenses committed in the presence of a child to provide a definition of the term "presence". The original bill also amended the statute relating to conditional release which prohibits an offender on conditional release from living within 1000 feet of certain locations to include a prohibition against living within 1000 feet of a school bus stop. The original bill also created a new section of statute which provides that it is unlawful for any person who has been convicted of a sexual offense against a victim under the age 16 from residing within 1,000 feet of a school, day care center, park or playground.

In the Committee on Crime Prevention, Corrections & Safety, the sponsor offered a strike everything amendment and the bill as amended was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

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