

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 Criminal Justice Committee

BILL: CS/SB 1892
INTRODUCER: Criminal Justice Committee and Senator Crist
SUBJECT: Sexual Misconduct/Students/Authority Figures
DATE: April 16, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.	_____	_____	ED	_____
3.	_____	_____	JA	_____
4.	_____	_____	WPSC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill reclassifies the felony degree of any offense listed in s. 775.21(4)(a)1., F.S., relating to criteria for registration as a sexual predator, or s. 943.0435(1)(a)1.a., F.S., relating to criteria for registration as a sexual offender (excluding one offense relating to sexual battery by a law enforcement officer or other specified officers) if the offense is committed by an “authority figure” of any “educational institution” against a “student” of any “educational institution.” The terms “authority figure,” “student,” and “educational institution” are defined in the bill.

This bill creates s. 775.0862, F.S., and amends s. 921.0022, F.S.

II. Present Situation:

Sexual predator and sexual offender registration criteria

Pursuant to s. 775.21, F.S., a person is required to register as a sexual predator and provide specified registration information if the person meets the criteria in s. 775.21(4), F.S. Upon conviction of the current offense, which must have been committed on or after October 1, 1993, the person is designated as a sexual predator by the court. A sexual predator under s. 775.21, F.S., is any person who falls into any of the following categories under s. 775.21(4), F.S.:

- *First Category:* The current offense is a capital, life, or first-degree felony violation, or any attempt thereof, of:
 - Section 787.01, F.S., which relates to kidnapping, in which the victim is a minor and the defendant is not the victim’s parent or guardian.
 - Section 787.02, F.S., which relates to false imprisonment, in which the victim is a minor and the defendant is not the victim’s parent or guardian.

- Section 794.011, F.S., which relates to sexual battery.
 - Section 800.04, F.S., which relates to lewd or lascivious offenses committed upon or in the presence of a person less than 16 years of age.
 - Section 847.0145, F.S., which relates to selling or buying of minors.
 - A violation of a similar law of another jurisdiction.
- *Second Category:* The current offense is any felony violation, or any attempt thereof, of any specified section of the Florida Statutes (or a similar law of another jurisdiction), *which is coupled with* a prior offense in any specified section of the Florida Statutes (or a similar law of another jurisdiction). The “current” offense involves a felony violation, or any attempt thereof, of any of the following sections of the Florida Statutes (or a similar law of another jurisdiction):
 - Section 787.01, F.S., where the victim is a minor and the defendant is not the victim’s parent or guardian.
 - Section 787.02, F.S., where the victim is a minor and the defendant is not the victim’s parent or guardian.
 - Section 787.025(2)(c), F.S., where the victim is a minor and the defendant is not the victim’s parent or guardian. This offense involves an adult luring or enticing a victim under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose.
 - Section, 794.011, F.S., excluding s. 794.011(10), F.S. (falsely accusing certain persons of a sexual battery).
 - Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
 - Section 796.03, F.S., which relates to procuring a person under the age of 18 for prostitution.
 - Section 796.035, F.S., which relates to selling or buying of minors into sex trafficking.
 - Section 800.04, F.S.
 - Section 825.1025(2)(b), F.S., relating to lewd or lascivious battery on an elderly person or disabled adult.
 - Section 827.071, F.S., relating to sexual performance by a child.
 - Section 847.0135(5), F.S., relating to computer transmission of lewd or lascivious exhibitions.
 - Section 847.0145, F.S.
 - Section 985.701(1), F.S., relating to a Department of Juvenile Justice (DJJ) employee engaging in sexual misconduct with a juvenile offender detained or supervised by DJJ or in DJJ’s custody.

The prior offense involves a violation of any of the specified sections of the Florida Statutes previously listed (or a similar law of another jurisdiction), or involves a violation of any of the following sections of the Florida Statutes (or a similar law of another jurisdiction):

- Lewd molestation and lewd exhibition offenses against an elderly person or disabled adult, as specified in s. 825.1025, F.S.
- Section 847.0133, F.S., relating to knowingly selling, etc., any obscene material to a minor.
- Offenses in s. 847.0135, F.S., involving computer pornography and soliciting, etc., a child or a person believed to be a child to commit certain illegal, sexual acts.

- *Third Category*: An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under ch. 394, F.S.

Pursuant to s. 943.0435, F.S., a person is required to register as a sexual offender and provide specified registration information if the person falls under any of the following categories in s. 943.0435(1), F.S.:

- *First Category*: Section 943.0345(1)(a)1.a.(I) and (II), F.S.: The person was convicted of committing, or attempting, soliciting, or conspiring to commit any of the following offenses, and has been released on or after October 1, 1997, from the sanction imposed for that conviction:
 - Section 787.01, F.S., where the victim is a minor and the defendant is not the victim's parent or guardian.
 - Section 787.02, F.S., where the victim is a minor and the defendant is not the victim's parent or guardian.
 - Section 787.025(2)(c), F.S., where the victim is a minor and the defendant is not the victim's parent or guardian.
 - Section 794.011, F.S., excluding s. 794.011(10), F.S.
 - Section 794.05, F.S.
 - Section 796.03, F.S.
 - Section 796.035, F.S.
 - Section 800.04, F.S.
 - Section, 825.1025, F.S.
 - Section 827.071, F.S.
 - Section 847.0133, F.S.
 - Section 847.0135, F.S., excluding s. 847.0135(4), F.S.
 - Section 847.0137, F.S., relating to electronic transmission of pornography to a minor.
 - Section 847.0138, F.S., relating to electronic transmission to a minor of materials harmful to a minor.
 - Section 847.0145, F.S.
 - Section 985.701(1), F.S.
 - Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed.
- *Second Category*: Section 943.0345(1)(a)1.b, F.S.: The person establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state but has been designated as a sexual predator, sexually violent predator, or another sexual offender designation in another state or jurisdiction and was, as a result that designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender.
- *Third Category*: Section 943.0345(1)(a)1.c., F.S.: The person establishes or maintains a residence in this state and is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any offense specified or described in the First Category.

- *Fourth Category*: Section 943.0345(1)(a)1.d., F.S.: On or after July 1, 2007, the person was adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit a violation of any of the following sections of the Florida Statutes or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:¹
 - Section 794.011, F.S., excluding s. 794.011(10), F.S.
 - Section 800.04(4)(b), F.S., where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion. Section 800.04(4)(b), F.S., punishes lewd or lascivious battery committed by a person of any age upon a person less than 16 years of age, if the battery involves encouraging, forcing, or enticing that person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.
 - Section 800.04(5)(c)1., F.S., where the court finds molestation involving unclothed genitals. Section 800.04(5)(c)1., F.S., punishes lewd molestation of a victim less than 12 years of age by an offender less than 18 years of age.
 - Section 800.04(5)(d), F.S., where the court finds the use of force or coercion and unclothed genitals. Section 800.04(5)(d), F.S., punishes lewd molestation of a victim 12 years of age or older but less than 16 years of age by an offender less than 18 years of age.

Offenses precluding education certification and employment

Section 1012.315, F.S., provides that a person is ineligible for educator certification, and instructional personnel and school administrators are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 220.187, F.S., or s. 1002.39, F.S., if the person, instructional personnel, or school administrator has been convicted of any felony offense prohibited under any of the statutes or chapters specified. Among the statutes and chapters specified are several that punish offenses listed in the sexual predator or sexual offender registration statutes:

- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
- Section 827.071, F.S., relating to sexual performance by a child.
- Chapter 847, F.S., relating to obscenity.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.

¹ The court must make written findings as specified in s. 943.0435, F.S.

- Any criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statutes or chapter listed.
- Any delinquent act committed in this state or any delinquent or criminal act committed in another state or under federal law which, if committed in this state, qualifies an individual for inclusion on the “Registered Juvenile Sex Offender List” under s. 943.0435(1)(a)1.d., F.S.

Sexual offenses requiring forfeiture of retirement benefits

Chapter 794, F.S., relating to sexual battery, contains s. 794.09, F.S., which provides that the retirement benefits of a person convicted of a felony committed on or after October 1, 2008, under this chapter are subject to forfeiture in accordance with s. 112.3173, F.S., or s. 121.091, F.S., if the person is a public officer or employee when the offense occurs; the person commits the offense through the use or attempted use of power, rights, privileges, duties, or position of the person’s public office or employment position; and the victim is younger than 18 years of age when the offense occurs.²

Chapter 800, F.S., relating to lewdness and indecent exposure, contains s. 800.05, F.S., which provides that the retirement benefits of a person convicted of a felony committed on or after October 1, 2008, defined in s. 800.04, F.S., are subject to forfeiture in accordance with s. 112.3173, F.S., or s. 121.091, F.S., if the person is a public officer or employee when the offense occurs; the person commits the offense through the use or attempted use of power, rights, privileges, duties, or position of the person’s public office or employment position; and the victim is younger than 16 years of age when the offense occurs.³

Minors and consent to sexual activity

The answer to the question of when a minor can legally consent to sexual activity is complex. Under s. 794.011, F.S., the sexual battery⁴ statute, there is a legal presumption that a child under 12 lacks the capacity to consent to sexual activity.⁵ However, “the presumption of capacity to consent ends at age eleven.”⁶ There are several sexual battery offenses in s. 794.011, F.S., that involve victims 12 or older, and that require that non-consent of the victim be proven.⁷

Section 800.04, F.S., punishes lewd or lascivious acts. Acts may involve a victim 12 or older but less than 16 years of age (e.g., lewd molestation committed by an adult upon a victim 12-15 years of age under s. 800.04(5)(c)2., F.S.), a victim less than 16 years of age (e.g., lewd battery under s. 800.04(4)(b), F.S.) or a victim less than 12 years of age (e.g., lewd molestation under s. 800.04(5)(b) and (c), F.S.). Section 800.04 “eliminates consent as a defense,” and this “necessarily implies that the sexual activity⁸ may be consensual, but nevertheless, the State, as a

² See ss. 112.3173(2)(e)7., 112.3137(3), and 121.091(5)(i), F.S.

³ *Id.*

⁴ Section 794.011(1)(h), F.S., defines “sexual battery” as “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.”

⁵ *Khianthalat v. State*, 974 So.2d 359, 362 (Fla.2008)

⁶ *Id.*

⁷ See s. 794.011(3), (4), and (5), F.S.

⁸ The definition of “sexual activity” in s. 800.04(1)(a), F.S., is virtually identical to the definition of “sexual battery” in s. 794.011(1)(h), F.S. The term “sexual activity” is relevant to lewd battery and lewd exhibition offenses.

matter of policy, will ignore the consent because of its legitimate interest in protecting victims from sexual exploitation.”⁹

A person 16 years of age or older but less than 24 years of age may engage in consensual sexual activity with a 16 or 17-year old. However, s. 794.05, F.S., prohibits a person 24 years of age or older from engaging in sexual activity with a 16 year-old or 17 year-old, unless the minor is an emancipated minor.¹⁰ A person 24 years of age or older who engages in sexual activity with an unemancipated 16 or 17 year-old commits a second degree felony. Unlike s. 800.04, F.S., consent is not specifically prohibited as a defense; however, non-consent is not an element of the offense. “With the enactment in 1996 of section 794.05, sixteen- and seventeen year old minors are now protected as are all other minors from *consensual* sexual activity with adults twenty-four or older.”¹¹ (Emphasis provided.)

Even when victim’s consent is precluded as a defense, victim’s consent is not precluded as a factor that the court may consider in mitigating (reducing) a Criminal Punishment Code sentence.¹² Section 921.00265(2)(f), F.S., provides as a mitigating factor that “[t]he victim was an initiator, willing participant, aggressor, or provoker of the incident.” Regarding an identical mitigating factor that applied under the former sentencing guidelines, the Florida Supreme Court opined:

... [T]rial judges are not prohibited as a matter of law from imposing a downward departure based on a finding that “[t]he victim was an initiator, willing participant, aggressor, or provoker of the incident.” Of course, in determining whether this mitigator applies when the victim is a minor, the trial court must consider the victim’s age and maturity and the totality of the facts and circumstances of the relationship between the defendant and the victim.¹³

III. Effect of Proposed Changes:

The bill creates s. 775.0862, F.S., which reclassifies¹⁴ the felony degree of any offense listed in s. 775.21(4)(a)1., F.S., relating to criteria for registration as a sexual predator, or

⁹ See footnote 3.

¹⁰ Section 794.05(2), F.S., states that the prohibitions against sexual activity with a minor do not apply to a 16 or 17 year -old “who has had the disability of nonage removed under chapter 743.” “Emancipation” is the “removal of all disabilities of nonage.” *Campbell v. State*, 771 So.2d 1205, 1206 (Fla. 2d DCA 2000), *review denied*, 786 So.2d 578 (Fla.2001). Section 743.01, F.S., authorizes emancipation through marriage. Section 743.015, F.S., authorizes emancipation by court order. Other sections provide for emancipation based on other reasons. See ch. 743, F.S.

¹¹ *State v. Cunningham*, 712 So.2d 1221, 1223 (Fla. 5th DCA 1998), *review denied*, 728 So.2d 201(Fla.1998).

¹² See ss. 921.0026 and 921.00265, F.S. The statutes relevant to the Criminal Punishment Code, Florida’s general sentencing law for non-capital felonies, are ss. 921.002, 921.0021, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.00265, and 921.0027, F.S.

¹³ *State v. Rife*, 789 So.2d 288, 296 (Fla.2001). See the following cases in which the court indicated the trial court could consider the “willing participant” mitigating factor. *Rivera v. State*, 1 So.3d 1158 (Fla. 2d DCA 2009) (s. 794.05, F.S.); *Shuler v. State*, 947 So.2d 1259 (Fla. 5th DCA 2007) (s. 794.05, F.S.), *Holland v. State*, 953 So.2d 19 (Fla. 2d DCA 2007) (lewd battery offense under s. 800.04, F.S.), *Knox v. State*, 814 So.2d 1185 (Fla. 2d DCA 2002) (sexual battery offense under s. 794.011(8), F.S.).

¹⁴ Generally, reclassification provisions increase a felony or, if applicable, a misdemeanor by one degree. Reclassifications increase the maximum penalty for the offense and result in the accrual of more sentence points, which are used to determine the scored lowest permissible sentence. See s. 921.0024, F.S.

s. 943.0435(1)(a)1.a., F.S., relating to criteria for registration as a sexual offender, unless the offense falls within s. 794.011(4)(g), F.S. (sexual battery committed by a law enforcement officer, correctional officer, or correctional probation officer), if the offense is committed by an “authority figure” of any “educational institution” against a “student” of any “educational institution.”

The term “authority figure” is defined as “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.

The term “educational institution” is defined as “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.”

The term “student” is defined as “any early learning or prekindergarten through grade 12 child who is enrolled in an educational institution.”

The bill requires the reclassification to occur as follows:

- In the case of a felony of the third degree,¹⁵ the offense is reclassified to a felony of the second degree.¹⁶
- In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.¹⁷
- In the case of a felony of the first degree, the offense is reclassified to a life felony.¹⁸

The bill provides that for purposes of sentencing under ch. 921, F.S., relating to the Criminal Punishment Code (Code), and determining incentive gain-time eligibility under ch. 944, F.S., a felony offense that is reclassified as provided in s. 775.0862, F.S., is ranked one level above the ranking under s. 921.0022, F.S., the offense severity ranking chart of the Code, or s. 921.0023, F.S., which ranks noncapital felonies not listed in the chart based on their felony degree.

The bill amends s. 921.0022(2), F.S., to indicate that the reclassification of the degree of the felony through the application of s. 775.0862, F.S., to any offense listed in the offense severity ranking chart of the Code shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023, F.S.

¹⁵ A third degree felony is punishable by imprisonment in state prison not exceeding 5 years, a fine not exceeding \$5,000, or both. *See* ss. 775.082 and 775.083, F.S.

¹⁶ A second degree felony is punishable by imprisonment in state prison not exceeding 15 years, a fine not exceeding \$10,000, or both. *See* ss. 775.082 and 775.083, F.S.

¹⁷ A first degree felony is generally punishable by imprisonment in state prison not exceeding 30 years, a fine not exceeding \$10,000, or both. *See* ss. 775.082 and 775.083, F.S.

¹⁸ A life felony is generally punishable by imprisonment in state prison for life or for a term not exceeding 40 years, a fine not exceeding \$15,000, or both. However, a lewd molestation violation under s. 800.04(5)(b), F.S., is punishable by life imprisonment or a split-sentence that is a term not exceeding 25 years’ imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person’s natural life. Also, a life felony which is a person’s second or subsequent lewd battery violation under s. 800.4(4)(b), F.S., is punishable by life imprisonment.

The effective date of the bill is October 1, 2009.

Other Potential Implications:

Reclassification is effectively based on an authority figure of any educational institution having a conviction for a relevant felony offense in s. 775.21, F.S., or s. 943.0435, F.S., against a student of any educational institution. The “authority figure” does not have to exercise authority over the “student.” Further, the “authority figure” does not even have to be employed, work under contract, or volunteer at the educational institution in which the student is enrolled. For example, a teacher at one school committing lewd battery against a student enrolled at another school would be subject to the reclassification provisions.

It is possible that an “authority figure” under the age of 24 who engages in sexual activity with a student 16 or 17 years of age might not fall under s. 794.05, F.S., if the sexual activity was consensual, and therefore, not have a conviction for an offense relevant to reclassification.

The bill does not contain a provision on forfeiture of retirement benefits similar to ss. 794.09 and 800.05, F.S. Consequently, the only offenses subject to reclassification under the bill that will require forfeiture of retirement benefits are sexual battery offenses under ch. 794, F.S., and lewd offenses under s. 800.04, F.S., if the offender was a public officer or employee when the offense occurred.

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.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the official estimate of prison bed impact, if any, of legislation, estimated that the original bill would have an indeterminate (unquantifiable) prison bed impact.¹⁹ The prison bed impact of the original bill was indeterminate because data on the current incarceration rate of educational authority figures imprisoned for a sexual offense could not be segregated from the general sexual offender population. The data segregation issue that resulted in the CJIC's estimate that the original bill would have an indeterminate impact appears to also apply to the latest version of the bill.

VI. Technical Deficiencies:

The term "student" is defined as "any early learning or prekindergarten through grade 12 child who is enrolled in an educational institution." "Child" is not defined in the bill or in s. 1.01, F.S., which defines frequently used terms in the Florida Statutes. If the intent is that a student must be under 18 years of age, the word "minor" should be substituted. A minor is defined in s. 1.01(13), F.S., as including "any person who has not attained the age of 18 years." If the intent is to include students of an educational institution of any age, the word "child" should be deleted.

VII. Related Issues:

According to one television news report, the substance for the bill was developed by students at Armwood High School in Seffner, Florida, and was presented at the "ought to be a Law" completion held by the School District of Hillsborough County in January of 2009.²⁰

Based on its review of records from the Florida Department of Education, the *Orlando Sentinel* reported in 2008 that at least 150 teachers had "been disciplined in the past three years after being accused of sexual misconduct with students..."²¹ The *Sentinel* stated: "Some of the most severe cases resulted in arrests and criminal convictions for offenses such as secretly watching a boy change and shower, tricking elementary-school girls into touching a man's genitals and having sex with minor students. But the *Sentinel's* case-by-case review of teacher -discipline

¹⁹ See <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm> (click on "2009 Conference Results" link).

²⁰ *Teachers convicted of sex with students could face prison*, WTSP-TV/10 Connects, St. Petersburg, Florida (<http://www.wtsp.com/includes/tools/print.aspx?storyid=102949>) (last updated March 26, 2009).

²¹ Denise Maria Balona, *SEX-CRIME TEACHERS- Florida plagued by arrests, disciplinary actions for misdeeds, including 34 recent local cases*, The Orlando Sentinel, Section A, p. A1 (November 16, 2008). All information in this paragraph is from this source. The *Sentinel* noted:

Mark Pudlow, a spokesman for the state's teachers union, the Florida Education Association, said disciplinary numbers also might be inflated in that some teachers give up fighting false accusations because the investigative process is so stressful.

"The process can be long -- and a lot of times, I've heard stories of teachers not wanting to put a student through anything further," he said.

A case can take years to resolve. It starts with an investigation by the education department and, upon a finding of probable cause, goes to a quasi-judicial panel of educators, law-enforcement officials, and others that hear the facts and determines penalties.

records from the Florida Department of Education found that a lot of the alleged misconduct did not rise to the criminal level.”

VIII. 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 April 15, 2009:

- Reclassifies the felony degree of any offense listed in s. 775.21(4)(a)1., F.S., relating to criteria for registration as a sexual predator, or s. 943.0435(1)(a)1.a., F.S., relating to criteria for registration as a sexual offender, unless the offense falls within s. 794.011(4)(g), F.S. (sexual battery committed by a law enforcement officer, correctional officer, or correctional probation officer), if the offense is committed by an “authority figure” of any “educational institution” against a “student” of any “educational institution.”
- Revises the definitions of the terms “authority figure,” “educational institution,” and “student.”
- Specifies how reclassified offenses shall be ranked in the offense severity ranking chart of the Criminal Punishment Code (Code) for purposes of sentencing under the Code and determining incentive gain-time eligibility under ch. 944, F.S.
- Specifies that reclassification of the degree of the felony through the application of s. 775.0862, F.S., to any offense listed in the offense severity ranking chart of the Code shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023, F.S.

B. Amendments:

None.