

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/CS/SB 1656

INTRODUCER: Fiscal Policy Committee; Appropriations Committee on Criminal Justice; and Senator Martin

SUBJECT: Child Exploitation Offenses

DATE: February 28, 2024

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1656 creates s. 800.045, F.S., to provide that a person 18 years of age or older who, with lewd or lascivious intent, engages in a pattern of inappropriate communication or conduct directed toward a child for the purpose of enticing such child to engage in any unlawful sexual behavior with that person or the exploitation of such child for human trafficking as provided in s. 787.06, F.S., commits the offense of lewd or lascivious grooming.

The bill provides that a person 18 years of age or older who commits lewd or lascivious grooming commits a third degree felony,¹ ranked as a Level 3 in the offense severity ranking chart.

¹ A third degree felony is punishable by a term of imprisonment not exceeding 5 years, as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill defines the terms “child,”² “inappropriate communication or conduct,”³ “sexual activity,”⁴ “sexual conduct,”⁵ “sexual performance,”⁶ and “unlawful sexual behavior.”⁷

The bill amends s. 921.0022, F.S., increasing ranking levels of specified child exploitation offenses on the offense severity ranking chart (OSRC) of the Criminal Punishment Code.

This bill may have a positive insignificant prison bed impact (increase of 10 or fewer beds). See Section V., Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

Grooming

Child sexual abuse is often effectuated following a period of ‘grooming’ and the sexualization of the relationship.⁸ “Grooming” refers to deliberate actions taken by a defendant to expose a child to sexual material; the ultimate goal of grooming is the formation of an emotional connection with the child and a reduction of the child’s inhibitions in order to prepare the child for sexual activity.⁹

During the desensitization phase the perpetrator typically introduces sexual content disguised as jokes or discussions, or through exposure to pornography or other explicit material,¹⁰ and utilizes frequent non-sexual touch to desensitize the victim to physical contact. Post-abuse, the offender may engage in maintenance strategies in order to facilitate future sexual abuse and to prevent disclosure.¹¹

² “Child” means a person less than 16 years of age.

³ “Inappropriate communication or conduct” means any verbal, written, or electronic communication or any conduct in which a person describes, depicts, or demonstrates sexual conduct or sexual excitement.

⁴ “Sexual activity” means the 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; however, sexual activity does not include an act done for a bona fide medical purpose. Section 800.04(1), F.S.

⁵ “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.” Section 847.001(19), F.S.

⁶ “Sexual performance” means any performance or part thereof which includes sexual conduct by a child. Section 847.071(1)(m), F.S.

⁷ “Unlawful sexual behavior” means any unlawful sexual activity, unlawful sexual conduct, or unlawful sexual performance.

⁸ State v. Brown, 299 So.3d 561 (5th DCA 2020).

⁹ United States v. Chambers, 642 F.3d 588, 593 (7th Cir. 2011).

¹⁰ Helping Survivors, Sexual Grooming, <https://helpingsurvivors.org/grooming/> (last visited February 27, 2024).

¹¹ Psychology Today, How to Recognize the Sexual Grooming of a Minor, (July 7, 2023)

<https://www.psychologytoday.com/us/blog/protecting-children-from-sexual-abuse/202010/how-to-recognize-the-sexual-grooming-of-a-minor> (last visited February 27, 2024).

Exploitation of Children

Lewd or Lascivious Offenses

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 person doing an act.^{12,13}

Neither the victim’s lack of chastity nor the victim’s consent is a defense to lewd or lascivious offenses. Additionally, the perpetrator’s ignorance of the victim’s age, the victim’s misrepresentation of his or her age, or the perpetrator’s bona fide belief of the victim’s age cannot be raised as a defense.^{14,15}

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;¹⁶ lewd or lascivious molestation;¹⁷ lewd or lascivious conduct;¹⁸ and lewd or lascivious exhibition.¹⁹

Lewd or Lascivious Conduct

A person who intentionally touches a person under 16 years of age in a lewd or lascivious manner²⁰ or solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.²¹

An offender who is:

- Eighteen years of age or older who commits lewd or lascivious conduct commits a second degree felony.²²

¹² Chesebrough v. State, 255 So.2d 675, 677 (Fla. 1971).

¹³ Whether an act or conduct is lewd or lascivious is a factual issue to be decided on a case -by-case basis. Andrews v. State, 130 So. 3d 788, 790 (Fla. 1st DCA 2014).

¹⁴ Section 800.04(2), F.S.

¹⁵ Section 800.04(3), F.S.

¹⁶ Section 800.04(4), F.S., defines lewd or lascivious battery as engaging in sexual activity with a person 12 years of age 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.

¹⁷ 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.

¹⁸ Section 800.04(6), F.S.

¹⁹ 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.

²⁰ Section 800.04(6)(a)1., F.S.

²¹ Section 800.04(6)(a)2., F.S.

²² 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.

- Less than 18 years of age who commits lewd or lascivious conduct commits a third degree felony.²³

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.²⁴

Lewd or Lascivious Battery

A person commits lewd or lascivious battery by:

- Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age;²⁵ 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.²⁶

Lewd or Lascivious Molestation

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.²⁷

Lewd or Lascivious Exhibition

A person commits lewd or lascivious exhibition by performing any of the following acts in the presence of a person under 16 years of age:

- Intentionally masturbating;
- Intentionally exposing the genitals in a lewd or lascivious manner; or
- Intentionally committing any other 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.²⁸

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.²⁹

Using a Child in Sexual Performance

Section 827.071(2), F.S., prohibits a person from, knowing the character and content thereof, employing, authorizing, or inducing a child to engage in a sexual performance; or being a parent,

²³ 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.

²⁴ Fla. Std. Jury Instr. (Crim.) 11.10(d), Lewd or Lascivious Conduct, s. 800.04(6), F.S.

²⁵ Section 800.04(4)(a)1., F.S.

²⁶ Section 800.04(4)(a)2., F.S.

²⁷ Section 800.04(5)(a), F.S.

²⁸ Section 800.04(7)(a), F.S.

²⁹ Section 794.053, F.S.

legal guardian, or custodian of such child, consenting to the participation by such child in a sexual performance. A violation for using a child in a sexual performance is a second degree felony³⁰ and the offense is ranked as a Level 6 offense on the OSRC.

Promoting a Sexual Performance by a Child

Under s. 827.071(3), F.S., a person commits a second degree felony if, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child. The offense is ranked as a Level 6 offense on the OSRC.

Prohibited Acts in Connection with Obscene Materials

A person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. For purposes of this section “obscene material” means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose.³¹

Prohibited Computer Usage

Any person who 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 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 by the person to be a child;³² 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 to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in any sexual conduct, commits a felony of the third degree.³³

Traveling to Meet a Minor

Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

³⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082, 775.083, or 775.084, F.S.

³¹ Section 847.0133(1), F.S.

³² Section 847.0135(3)(a), F.S.

³³ Section 847.0135(3)(b), F.S.

- 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 engage in any illegal act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child;³⁴ 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 to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in any sexual conduct, commits a felony of the second degree.³⁵

Transmission of Material Harmful to Minors

Section 847.0138, F.S., prohibits a person, in this state or in any jurisdiction other than this state, from knowingly transmitting or believing that he or she is transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor, as a third-degree felony.

Section 847.001(7), F.S., defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement³⁶ when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

While there are several offenses in current law which prohibit a person from encouraging, enticing, soliciting, or inducing a minor to engage in sexual activity, lewd or lascivious behavior, or a sexual performance, current law does not specifically criminalize the preparation of a child to engage in sexual activity, sexual conduct, or a sexual performance through a pattern of inappropriate communication or conduct directed toward the child.

Criminal Punishment Code and Offense Severity Ranking

- The Criminal Punishment Code³⁷ is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates.
- 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

³⁴ Section 847.0135(4)(a), F.S.

³⁵ Section 847.0135(4)(b), F.S.

³⁶ Section 847.001(20), F.S., defines “sexual excitement” as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

³⁷ 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.

provided in s. 921.0023, F.S. Currently, a felony of the third degree is ranked as a level 1 offense, and a second degree felony is ranked as a level 4 offense.³⁸

Reclassification of Specified Child Exploitation Offenses

Under s. 775.0847, F.S., a violation of s. 827.071, F.S., must be reclassified to the next higher degree if the offender possesses 10 or more images of any form of child pornography regardless of content, and the content of at least one image contains one or more of the following:

- A child who is younger than the age of five;
- Sadomasochistic abuse involving a child;
- Sexual battery involving a child;
- Sexual bestiality involving a child; or
- Any motion picture, film, video, or computer-generated motion picture, film, or video involving a child, regardless of length and regardless of whether the motion picture, film, video, or computer-generated motion picture, film, or video contains sound.

III. Effect of Proposed Changes:

The bill creates s. 800.045, F.S., to provide that a person 18 years of age or older who, with lewd or lascivious intent, engages in a pattern of inappropriate communication or conduct directed toward a child for the purpose of enticing such child to engage in any unlawful sexual behavior with that person or the exploitation of such child for human trafficking as provided in s. 787.06, F.S., commits the offense of lewd or lascivious grooming.

The bill provides that a person 18 years of age or older who commits lewd or lascivious grooming commits a third degree felony,³⁹ ranked as a Level 3 in the offense severity ranking chart.

The bill defines the terms “child,”⁴⁰ “inappropriate communication or conduct,”⁴¹ “sexual activity,”⁴² “sexual conduct,”⁴³ “sexual performance,”⁴⁴ and “unlawful sexual behavior.”⁴⁵

³⁸ Section 921.0023(1) and (2), F.S.

³⁹ A third degree felony is punishable by a term of imprisonment not exceeding 5 years, as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁴⁰ “Child” means a person less than 16 years of age.

⁴¹ “Inappropriate communication or conduct” means any verbal, written, or electronic communication or any conduct in which a person describes, depicts, or demonstrates sexual conduct or sexual excitement.

⁴² “Sexual activity” means the 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; however, sexual activity does not include an act done for a bona fide medical purpose. Section 800.04(1), F.S.

⁴³ “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

Section 847.001(19), F.S.

⁴⁴ “Sexual performance” means any performance or part thereof which includes sexual conduct by a child.

Section 847.071(1)(m), F.S.

⁴⁵ “Unlawful sexual behavior” means any unlawful sexual activity, unlawful sexual conduct, or unlawful sexual performance.

The bill amends s. 921.0022, F.S., increasing ranking levels of specified child exploitation offenses on the offense severity ranking chart (OSRC) of the Criminal Punishment Code.

The bill amends s. 921.0022, F.S., to increase the OSRC rankings for specified child exploitation offenses as follows:⁴⁶

Violation	Felony Level	Current OSRC Ranking	New OSRC Ranking
Lewd or lascivious grooming. Section 800.045(2), F.S.	3rd	New offense	Level 3
Possessing with intent to promote any photographic material, motion picture, etc., which includes child pornography. Section 827.071(4), F.S.	2nd	Level 5	Level 7
Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography. Section 827.071(5), F.S.	3rd	Level 5	Level 6
Use or induce a child in a sexual performance, or promote or direct such performance. Section 827.071(2) and (3), F.S.	2nd	Level 6	Level 7

The bill is effective October 1, 2024.

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.

⁴⁶ The bill retains the current felony levels for ss. 827.071(2), (3), (4), and (5), F.S.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution prevents the government from creating laws that restrict the speech of citizens.⁴⁷ “Congress shall make no law ... abridging the freedom of speech.” The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.⁴⁸

The state has a compelling interest in protecting the physical and psychological well-being of children. Courts have recognized that speech used to further the sexual exploitation of children does not enjoy constitutional protection.⁴⁹ The state also has a compelling interest in protecting minors from being seduced to perform sexual actions, and no legitimate commerce is burdened by penalizing the transmission of harmful sexual material to known minors in order to seduce them.⁵⁰

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 has a positive insignificant impact (increase of 10 or fewer beds) on prison beds.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.0022.

⁴⁷ U.S. Const., amend I.

⁴⁸ U.S. Const. amend XIV. *See also* Art. I, Fla. Const.

⁴⁹ *Cashatt v. State*, 873 So.3d 430, (1st DCA 2004).

⁵⁰ *Pike v. Bruce Church*, 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970).

⁵¹ Office of Economic and Demographic Research *SB 1656*, available at, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB1656.pdf> visited February 27, 2024).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Fiscal Policy on February 27, 2024:

The committee substitute:

- Creates the offense of lewd or lascivious grooming providing that a person 18 years of older who, with lewd or lascivious intent, engages in a pattern of inappropriate communication or conduct directed toward a child for the purpose of:
 - Enticing the child to engage in any unlawful sexual behavior with that person, or
 - The exploitation of the child for human trafficking.
- Provides that a person who commits lewd or lascivious grooming commits a third degree felony, ranked as a Level 3 in the offense severity ranking chart.
- Retains the increased OSRC rankings for certain crimes of child exploitation.

CS by Appropriations Committee on Criminal and Civil Justice on February 13, 2024:

The committee substitute:

- Removes the penalty enhancements for specific crimes relating to the exploitation of children in ss. 847.1035 and 847.0137, F.S.
- Removes several increased OSRC rankings for specified child exploitation offenses.
- Increases the OSRC ranking for possessing or intentionally viewing child pornography under s. 827.071(5) from a level 5 to a level 6.

- B. **Amendments:**

None.