

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 485 Sexual Misconduct with Students by Authority Figures

SPONSOR(S): Raburn

TIED BILLS: **IDEN./SIM. BILLS:** SB 698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 943.0435, F.S., lists numerous offenses that qualify a person as a sexual offender (e.g., sexual battery, lewd or lascivious offenses, video voyeurism, etc.). These offenses range from third degree felonies to capital felonies, and most are ranked between Levels 6 and Level 9 in the Offense Severity Ranking Chart.

The bill reclassifies the offenses listed in s. 943.0435, F.S., if the offense is committed by an authority figure of an educational institution against a student of the educational institution. The offenses are reclassified as follows:

- Third degree felonies are reclassified as second degree felonies;
- Second degree felonies are reclassified as first degree felonies; and
- First degree felonies are reclassified as life felonies.

The bill also requires a reclassified offense to be ranked one level higher in the Offense Severity Ranking Chart, and provides the following definitions:

- "Authority figure" means 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;
- "Educational institution" means 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; and
- "Student" means a child who is enrolled in early learning or prekindergarten through grade 12.

On January 30, 2014, the Criminal Justice Impact Conference determined that this bill will have an insignificant prison bed impact on the Department of Corrections.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Penalties and the Ranking Chart

Sections 775.082 and 775.083, F.S., establish the following penalties applicable to felony offenses:

- A capital felony must be punished by death if a sentencing proceeding results in findings by the court that the person must be punished by death, otherwise the person must be punished by life imprisonment and is ineligible for parole;
- A life felony committed on or after July 1, 1995, is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine;
- A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine;
- A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine; and
- A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.¹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense.² If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.³

A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record, and other aggravating factors.⁴ A defendant's total sentence points are then entered into a mathematical computation that determines the defendant's lowest permissible sentence.⁵ The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense (the statutory maximum sentences for felonies are described above).⁶

Penalties for Specified Sexual Offenses

Section 943.0435, F.S., contains a list of offenses that qualify a person as a sexual offender. The following chart describes each of these offenses, the felony degree of the offense, and the where the offense is ranked in the Offense Severity Ranking Chart.

Offense	Felony Degree	Ranking
Section 787.01(2), F.S. - Kidnapping (minor victim, offender not a parent)	1st	9 or 10
Section 787.01(3), F.S. - Kidnapping (child under 13 w/ sex offense, offender not a parent)	Life	10
Section 787.02(2), F.S. - False Imprisonment (minor victim, offender not a parent)	3rd	6
Section 787.02(3), F.S. - False Imprisonment (child under 13 w/ sex offense, offender not a parent)	1st	9
Section 787.025(2)(c), F.S. - Luring or Enticing a Child (offender 18+ w/ previous sex offense and not a parent, victim under 12)	3rd	NR (defaults to Level 1)

¹ Section 921.002, F.S.

² Section 921.0022, F.S.

³ Section 921.0023, F.S.

⁴ Section 921.0024, F.S.

⁵ *Id.* Section 921.0026, F.S., prohibits a judge from imposing a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."

⁶ Section 921.0024(2), F.S.

Section 787.06(3)(b), F.S. - Human Trafficking (using coercion for commercial sexual activity)	1st	8
Section 787.06(3)(d), F.S. - Human Trafficking (using coercion for commercial sexual activity of any individual who is an unauthorized alien)	1st	9
Section 787.06(3)(f), F.S. - Human Trafficking (using coercion for commercial sexual activity who does so by the transfer or transport of any individual from outside this state to within the state)	1st	8
Section 787.06(3)(g), F.S. - Human Trafficking (for commercial sexual activity in which any child under 18 is involved)	1st	9
Section 787.06(3)(h), F.S. - Human Trafficking (for commercial sexual activity in which any child under 15 is involved)	Life	10
Section 794.011(2)(a), F.S. - Sexual Battery (offender 18+, victim under 12)	Capital	NR
Section 794.011(2)(b), F.S. - Sexual Battery (offender under 18, victim under 12)	Life	9
Section 794.011(3), F.S. - Sexual Battery (victim 12+, no consent, deadly force)	Life	10
Section 794.011(4), F.S. - Sexual Battery (victim 12+, no consent, special circumstances)	1st	9
Section 794.011(5), F.S. - Sexual Battery (victim 12+, no consent, no deadly force)	2nd	8
Section 794.011(8)(a), F.S. - Sexual Battery (victim under 18, offender in a position of familial or custodial authority and solicits victim to engage in sexual battery)	3rd	6
Section 794.011(8)(b), F.S. - Sexual Battery (victim 12+ but under 18, offender in a position of familial or custodial authority and engages in sexual battery)	1st	9
Section 794.011(8)(c), F.S. - Sexual Battery (victim under 12, offender 18+ in a position of familial or custodial authority and engages in sexual battery)	Capital	NR
Section 794.011(8)(c), F.S. - Sexual Battery (victim under 12, offender under 18 in a position of familial or custodial authority and engages in sexual battery)	Life	NR (defaults to Level 10)
Section 794.05, F.S. - Sexual Activity with Certain Minors (offender 24+ engages in sexual activity with victim 16 or 17)	2nd	6
Section 796.03, F.S. - Procuring person under 18 for prostitution	2nd	7
Section 796.035, F.S. - Selling or buying of minors into sex trafficking or prostitution (by parent, guardian, etc.)	1st	9
Section 800.04(4), F.S. - Lewd or Lascivious Battery	2nd	8
Section 800.04(5)(b), F.S. - Lewd or Lascivious Molestation (offender 18+, victim under 12)	Life	9
Section 800.04(5)(c), F.S. - Lewd or Lascivious Molestation (offender under 18 and victim under 12, offender 18+ and victim age 12-15)	2nd	7
Section 800.04(5)(d), F.S. - Lewd or Lascivious Molestation (offender under 18 and victim age 12-16)	3rd	6
Section 800.04(6)(b), F.S. - Lewd or Lascivious Conduct (offender 18+)	2nd	6
Section 800.04(6)(c), F.S. - Lewd or Lascivious Conduct (offender under 18)	3rd	5
Section 800.04(7)(b), F.S. - Lewd or Lascivious Exhibition (offender 18+)	2nd	5
Section 800.04(7)(c), F.S. - Lewd or Lascivious Exhibition (offender under 18)	3rd	4

Section 810.145(8)(a), F.S. - Video Voyeurism (offender 18+ responsible for welfare of child under 16, offender 18+ employed at a school and victim is a student, offender 24+ and victim under 16)	3rd	NR (defaults to Level 1)
Section 810.145(8)(b), F.S. - Video Voyeurism (w/ pervious voyeurism conviction)	2nd	6
Section 825.1025(2), F.S. - Lewd or Lascivious Battery upon Elderly/Disabled	2nd	8
Section 825.1025(3), F.S. - Lewd or Lascivious Molestation upon Elderly/Disabled	3rd	6
Section 825.1025(4), F.S. - Lewd or Lascivious Exhibition in presence of Elderly/Disabled	3rd	5
Section 827.071(2), F.S. - Using child in a sexual performance, or being a parent, guardian, or custodian of child and consenting to the participation of child in a sexual performance.	2nd	6
Section 827.071(3), F.S. - Promoting a sexual performance by a child	2nd	6
Section 827.071(4), F.S. - Possess with the intent to promote any picture, etc. which includes any sexual conduct by a child	2nd	5
Section 827.071(5), F.S. - Possess any picture, etc. which includes any sexual conduct by a child	3rd	5
Section 847.0133, F.S. - Selling, renting, loaning, giving away, distributing, transmitting, or showing any obscene material to a minor.	3rd	NR (defaults to Level 10)
Section 847.0135(2), F.S. - Computer pornography	3rd	6
Section 847.0135(3), F.S. - Using computer to solicit, lure, entice, etc. a child to commit a sex act or a parent to consent to a child's participation in a sex act	3rd	7
Section 847.0135(3), F.S. - Using computer to solicit, lure, entice, etc. a child to commit a sex act or a parent to consent to a child's participation in a sex act (while misrepresenting one's age)	2nd	7
Section 847.0135(4), F.S. - Traveling to Meet a Minor	2nd	7
Section 847.0135(5), F.S. - Committing certain sex acts live over computer knowing it's being viewed by victim under 16 (offender 18+)	2nd	5
Section 847.0135(5), F.S. - Committing certain sex acts live over computer knowing it's being viewed by victim under 16 (offender under 18)	3rd	4
Section 847.0137, F.S. - Transmitting Child Pornography	3rd	5
Section 847.0138, F.S. - Transmitting Material Harmful to Minors	3rd	5
Section 847.0145, F.S. - Selling or Buying of Minors	1st	9
Section 985.701(1), F.S. - Sexual Misconduct with a Juvenile Offender	2nd	NR (defaults to Level 4)

Effect of the Bill

The bill reclassifies the offenses listed in the above chart if the offense is committed by an authority figure of an educational institution against a student of the educational institution. The offenses are reclassified as follows:

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- Second degree felonies are reclassified as first degree felonies; and
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The bill also requires a reclassified offense to be ranked one level higher in the Offense Severity Ranking Chart.

The bill provides the following definitions:

- "Authority figure" means 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;
- "Educational institution" means 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; and
- "Student" means a child who is enrolled in early learning or prekindergarten through grade 12.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "Stop Harassing Underage Teens Act."

Section 2. Creates s. 775.0862, F.S., relating to sexual battery offenses against students by authority figures; reclassification.

Section 3. Amends s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

Section 4. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

On January 30, 2014, the Criminal Justice Impact Conference determined that this bill will have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The reference to the offenses in s. 775.21(4)(a)1., F.S., is unnecessary. All of the offenses listed in this statute are contained in s. 943.0435(1)(a)1.a., F.S., which the bill also references.

2. The bill reclassifies certain sex offenses if committed by an authority figure of an educational institution against a student of the educational institution. Some of these offenses already require that the offense be committed by a person with some type of custodial authority over the victim.⁷ For example, video voyeurism is a third degree felony (if committed by someone 19 or older), but is a second degree felony if committed by a person 18 or older who is employed at a school and who commits the offense against a student of the school.

“The Fifth Amendment's double jeopardy clause prohibits prosecuting an individual for...multiple punishments for the same offense.” However, reclassification “does not create a new and separate offense, but changes the degree of the felony already charged.”⁸ As such, the bill does not appear to raise double jeopardy concerns. However, since the Legislature has already specifically created criminal offenses involving offenders with custodial authority over their victims, it is questionable whether the bill's reclassification provisions should apply to these offenses.

3. The bill's definitions of the terms “authority figure,” “educational institution,” and “student” are unclear as to who they include. This could be resolved by using existing statutory definitions found in the education code.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁷ These offenses include ss. 794.011(8)(a), (b), and (c), 796.035, 810.145(8)(a), 827.071(2), and 847.0135(3), F.S.

⁸ *Green v. State*, 84 So.3d 356 (Fla.App. 1 Dist. 2012).