

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 Appropriations Committee on Criminal and Civil Justice

BILL: SB 1656

INTRODUCER: Senator Martin

SUBJECT: Child Exploitation Offenses

DATE: February 12, 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>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1656 amends ss. 847.0135 and 847.0137, F.S., enhancing penalties for specific crimes relating to the exploitation of children.

The bill amends s. 921.0022, F.S., ranking offenses and revising ranking levels of certain 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:

Child Exploitation Offense

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, 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 felony¹ and the offense is ranked as a Level 6 offense on the OSRC.

¹ 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

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.

Possessing Child Pornography with Intent to Promote

Under s. 827.071(4), F.S., a person commits a second degree felony if he or she possesses with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. The offense is ranked as a Level 5 offense on the OSRC.

Possessing or Intentionally Viewing Child Pornography

Section 827.071(5), F.S., prohibits a person from knowingly possessing, controlling, or intentionally viewing a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include child pornography. A violation of the prohibition is a third degree felony and the offense is ranked as a Level 5 offense on the OSRC.

Additionally, s. 827.071(5), F.S., specifies that the possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense, and if such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes child pornography depicting more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense.²

Section 827.071, F.S., defines the following relevant terms:

- “Child pornography” means any image depicting a minor engaged in sexual conduct, or any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.³
- “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.⁴

² This does not apply to any material possessed, controlled, or intentionally viewed as part of a law enforcement investigation. Section 827.071(5)(b), F.S.

³ Section 827.071(1)(b), F.S.

⁴ A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.” Section 827.071(1)(l), F.S.

- “Sexual performance” means any performance or part thereof which includes sexual conduct by a child.⁵

Criminal Punishment Code and Offense Severity Ranking

- The Criminal Punishment Code⁶ 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 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.⁷

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 amends s. 847.0135, F.S., prohibiting the use of computer services or devices that are capable of electronic data storage or transmission to “[s]educe, solicit, lure, or entice, or attempt to solicit, lure, or entice, a child or another person believed by the person to be a child” to engage in unlawful sexual conduct, and providing that a person who violates this provision commits a felony of the second degree.⁸

The bill also revises penalties for certain uses of computer services or devices, providing that 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:

⁵ “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience. Section 827.071(1)(m) and (g), F.S.

⁶ 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.

⁷ Section 921.0023(1) and (2), F.S.

⁸ A second degree felony is punishable by a term of imprisonment not exceeding 15 years as provided in s. 775.082, s. 775.083, or s. 775.084, 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 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;⁹ 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.¹⁰

The bill amends s. 847.0137, F.S., providing that any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, F.S., to another person in this state or in another jurisdiction commits a felony of the second degree.

The bill also provides that any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, F.S., to any person in this state commits a second degree felony.

The bill amends s. 921.0022, F.S., to increase the OSRC rankings for specified child exploitation offenses as follows:¹¹

Violation	Current OSRC Ranking	New OSRC Ranking
Lewd or lascivious exhibition using computer; offender less than 18 years under s. 847.0135(5)(c), F.S.	Level 4	Unranked third degree felony
Possessing child pornography with intent to promote under s. 827.071(4), F.S.	Level 5	Level 7
Lewd or lascivious exhibition using computer; offender 18 years or older under s. 847.0135(5)(b), F.S.	Level 5	Level 6
Transmission of pornography by electronic device or equipment under s. 847.0137(2) or (3), F.S.	Level 5	Level 6
Transmission of material harmful to minors to a minor by electronic device or equipment under s. 847.0138(2) or (3), F.S.	Level 5	Level 7
Facilitates sexual conduct with a minor or the visual depiction of such conduct under, s. 847.0135(2), F.S.	Level 6	Level 7
Using a child in or promoting a child sexual performance under s. 827.071(2) or (3), F.S.	Level 6	Level 7

By increasing the offense severity ranking of specified child exploitation offenses, the bill may increase the minimum sentence to which a person convicted of such an offense may be sentenced and may increase a term of incarceration required to be imposed as part of that sentence.

⁹ Section 847.0135(3)(a), F.S.

¹⁰ Section 847.0135(3)(b), F.S.

¹¹ The bill retains the current felony levels for ss. 827.071(2), (3), (4), and (5), F.S.

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.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) preliminary review concluded that there may be a positive, insignificant impact (increase of 10 or fewer beds) on prison beds. The DOC reported that in FY 2022-23, there were 169 offenders admitted to prison for felonies amended under this bill. Additionally, there were 75 offenders admitted to supervision who could be subject to prison under the bill's changes to felony degrees and levels. While offenders sentenced to jail are not included, these numbers offer an approximation of the current incarceration rates for each felony impacted by this bill. All of these felonies have incarceration rates that are much higher than expected for their current degrees and levels, and these differences continue when

comparing them to incarceration rates for new felony degrees and levels. Therefore, it is not expected to be a significant impact on the prison population.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 847.0135, 847.0137, and 921.0022.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹² Office of Economic and Demographic Research *SB 1656 Preliminary Estimate*, (on file with the Senate Appropriations Committee on Criminal and Civil Justice)