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LURING A CHILD

In recent weeks our papers have reported incidents where an individual has attempted to lure or kidnap a child. Often these news reports describe how the perpetrator is thwarted in the middle of his attempt to abduct the child. Professionals experienced in crimes against children immediately recognize the dangerous nature of these situations and the ultimate threat that they present to our children.

Recently, the Florida Supreme Court was called upon to decide the fairness of a new statute designed to deal with the attempted kidnaping of a child. According to the police reports on file in the Southwest Florida case, the perpetrator approached a 10-year-old girl who was playing in front of her house, and asked her if she wanted to see his house and get a toy. He then gave the child a stuffed animal and she left with him on his bicycle. Once inside his residence, he asked her to give him a hug and a kiss, which she did. He also touched a mark on her thigh. At the time of these events, the perpetrator did not have the permission or consent of her parents to take the child. Her parents reported her as missing to their neighbors and she was found 90 minutes later still in the company of the perpetrator.

The assailant was previously convicted of indecency with a child in Texas, a crime that is similar to Florida's lewd and lascivious assault in the presence of a minor child.

Florida's new law makes it a felony for a person over 18 to intentionally lure or entice a child under 12 years of age into a structure, a dwelling, or a vehicle, or "for other than a lawful purpose." This crime only applies to individuals that have been previously convicted of a sexual battery or lewd assault on a child.

After challenging the constitutionality of the law, the defendant pleaded "no contest" and was sentenced to nine months in the county jail with credit for time served and five years probation. His challenge to the fairness or constitutionality of the statute went all the way to the Florida Supreme Court. Basically, he

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argued that the phrase “for other than a lawful purpose” was so vague that it failed to give persons of common intelligence adequate warning of the conduct which it prohibited. In order to be consistent with our constitution, criminal statutes must provide adequate notice of the conduct they prohibit when measured by common understanding and practice.

In this case, the Supreme Court concluded that the phrase “for other than a lawful purpose” meant that the state is simply required to prove that the defendant lured the child for an “illegal” purpose, with the intent to violate a Florida law by committing a crime. Under this interpretation, the Court found that the statute provides adequate notice of the conduct it prohibited and was not unconstitutional. The perpetrator’s conviction was affirmed by the Court.

Perhaps we should ask why a convicted child sex offender who lured a second child into his home was given a sentence of only nine months in the local county jail?

The dangerous character of the act and the offender’s demonstrated inability to control himself represented a significant threat to the community. Sadly, even obvious threats to the safety of children are often undervalued in our criminal justice system.

The case is *State of Florida v. Brake*, and can be found at 26 Florida Law Weekly S608. It was decided by the Florida Supreme Court on September 20, 2001.