

By Senator Crist

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1 A bill to be entitled
2 An act relating to child pornography; amending s.
3 775.0847, F.S.; revising the definition of "child
4 pornography" to include visual depictions in which it
5 appears that a minor is engaging in sexual conduct;
6 providing that proof of the identity of a minor is not
7 required; defining "minor"; amending s. 827.071, F.S.;
8 defining "child pornography" and "minor"; conforming
9 cross-references; providing that it is unlawful for
10 any person to knowingly sell, promote, solicit,
11 purchase, or distribute child pornography; providing
12 penalties; amending s. 921.0022, F.S.; conforming
13 provisions of the offense severity ranking chart of
14 the Criminal Punishment Code to changes made by the
15 act; reenacting s. 794.0115(2), F.S., relating to
16 dangerous sexual felony offenders and mandatory
17 sentencing thereof, to incorporate the amendment to s.
18 827.071, F.S., in a reference thereto; providing an
19 effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Paragraph (b) of subsection (1) of section
24 775.0847, Florida Statutes, is amended, a new paragraph (c) is
25 added to that subsection, and present paragraphs (c) through (f)
26 of that subsection are redesignated as paragraphs (d) through
27 (g), respectively, to read:

28 775.0847 Possession or promotion of certain images of child
29 pornography; reclassification.—

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30 (1) For purposes of this section:

31 (b) "Child pornography" means any image depicting a minor
32 engaged in sexual conduct or such visual depiction that has been
33 created, adapted, or modified to appear that a minor is engaging
34 in sexual conduct. Proof of the identity of the minor is not
35 required in order to find a violation of this section.

36 (c) "Minor" means a person who had not attained the age of
37 18 years at the time the visual depiction was created, adapted,
38 or modified, or whose image while a minor was used in creating,
39 adapting, or modifying the visual depiction, and who is
40 recognizable as an actual person by the person's facial
41 features, likeness, or other distinguishing characteristics.

42 Section 2. New paragraphs (a) and (c) are added to
43 subsection (1) of section 827.071, Florida Statutes, present
44 paragraphs (a) through (i) of that subsection are redesignated
45 as paragraph (b) and paragraphs (d) through (k) of that
46 subsection, respectively, and present paragraph (i) of
47 subsection (1) and subsections (4) and (5) of that section are
48 amended, to read:

49 827.071 Sexual performance by a child; penalties.—

50 (1) As used in this section, the following definitions
51 shall apply:

52 (a) "Child pornography" means any visual depiction,
53 including, but not limited to, any photograph, film, video,
54 picture, computer or computer-generated image or picture, or
55 digitally created image or picture, whether made or produced by
56 electronic, mechanical, or other means, of sexual conduct, where
57 the production of such visual depiction involves the use of a
58 minor engaging in sexual conduct, or such visual depiction has

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59 been created, adapted, or modified to appear that a minor is
60 engaging in sexual conduct. Proof of the identity of the minor
61 is not required in order to find a violation of this section.

62 (c) "Minor" has the same meaning as provided in s.
63 775.0847.

64 (k) ~~(i)~~ "Simulated" means the explicit depiction of conduct
65 set forth in paragraph (i) ~~(g)~~ which creates the appearance of
66 such conduct and which exhibits any uncovered portion of the
67 breasts, genitals, or buttocks.

68 (4) It is unlawful for any person to possess with the
69 intent to promote any child pornography or any other photograph,
70 motion picture, exhibition, show, representation, or other
71 presentation that ~~which~~, in whole or in part, includes any
72 sexual conduct by a minor ~~child~~. The possession of three or more
73 copies of such photograph, motion picture, representation, or
74 presentation is prima facie evidence of an intent to promote.
75 Whoever violates this subsection commits ~~is guilty of~~ a felony
76 of the second degree, punishable as provided in s. 775.082, s.
77 775.083, or s. 775.084.

78 (5) It is unlawful for any person to knowingly sell,
79 promote, solicit, purchase, or distribute child pornography or
80 any other ~~possess~~ a photograph, motion picture, exhibition,
81 show, representation, or other presentation that ~~which~~, in whole
82 or in part, he or she knows or believes to include any sexual
83 conduct by a minor ~~child~~. The possession of each such
84 photograph, motion picture, exhibition, show, representation, or
85 presentation is a separate offense. Whoever violates this
86 subsection commits ~~is guilty of~~ a felony of the third degree,
87 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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88 Section 3. Paragraph (e) of subsection (3) of section
 89 921.0022, Florida Statutes, is amended to read:

90 921.0022 Criminal Punishment Code; offense severity ranking
 91 chart.—

92 (3) OFFENSE SEVERITY RANKING CHART

93 (e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.

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440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01 (2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.

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- 110 800.04(6)(c) 3rd Lewd or lascivious conduct; offender
less than 18 years.
- 111 800.04(7)(b) 2nd Lewd or lascivious exhibition; offender
18 years or older.
- 112 806.111(1) 3rd Possess, manufacture, or dispense fire
bomb with intent to damage any structure
or property.
- 113 812.0145(2)(b) 2nd Theft from person 65 years of age or
older; \$10,000 or more but less than
\$50,000.
- 114 812.015(8) 3rd Retail theft; property stolen is valued
at \$300 or more and one or more
specified acts.
- 115 812.019(1) 2nd Stolen property; dealing in or
trafficking in.
- 116 812.131(2)(b) 3rd Robbery by sudden snatching.
- 117 812.16(2) 3rd Owning, operating, or conducting a chop
shop.
- 118 817.034(4)(a)2. 2nd Communications fraud, value \$20,000 to
\$50,000.

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817.234(11)(b) 2nd Insurance fraud; property value \$20,000 or more but less than \$100,000.

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817.2341(1), 3rd Filing false financial statements, (2)(a) & making false entries of material fact or (3)(a) false statements regarding property values relating to the solvency of an insuring entity.

121

817.568(2)(b) 2nd Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.

122

817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device or reencoder.

123

825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

827.071(4) 2nd Possess with intent to promote any child pornography or other photographic material, motion picture, etc., which includes sexual conduct by a minor child.

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827.071 (5) 3rd Possess any child pornography or other photographic material, motion picture, etc., which includes sexual conduct by a minor ~~child~~.

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839.13 (2) (b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

126

843.01 3rd Resist officer with violence to person; resist arrest with violence.

127

847.0135 (5) (b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

128

847.0137 (2) & 3rd Transmission of pornography by (3) electronic device or equipment.

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847.0138 (2) & 3rd Transmission of material harmful to (3) minors to a minor by electronic device or equipment.

130

874.05 (2) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

131

893.13 (1) (a) 1. 2nd Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b),

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(1) (d), (2) (a), (2) (b), or (2) (c) 4.
drugs).

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893.13(1)(c)2. 2nd

Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

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893.13(1)(d)1. 1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

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893.13(1)(e)2. 2nd

Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

135

893.13(1)(f)1. 1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b),

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(1) (d), or (2) (a), (2) (b), or (2) (c) 4.
 drugs) within 1,000 feet of public
 housing facility.

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893.13(4) (b) 2nd Deliver to minor cannabis (or other s.
 893.03(1) (c), (2) (c) 1., (2) (c) 2.,
 (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7.,
 (2) (c) 8., (2) (c) 9., (3), or (4) drugs).

137

893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing of
 controlled substance.

138

139 Section 4. For the purpose of incorporating the amendment
 140 made by this act to section 827.071, Florida Statutes, in
 141 references thereto, subsection (2) of section 794.0115, Florida
 142 Statutes, is reenacted to read:

143 794.0115 Dangerous sexual felony offender; mandatory
 144 sentencing.—

145 (2) Any person who is convicted of a violation of s.
 146 787.025(2) (c); s. 794.011(2), (3), (4), (5), or (8); s.
 147 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
 148 (4); or s. 847.0145; or of any similar offense under a former
 149 designation, which offense the person committed when he or she
 150 was 18 years of age or older, and the person:

151 (a) Caused serious personal injury to the victim as a
 152 result of the commission of the offense;

153 (b) Used or threatened to use a deadly weapon during the
 154 commission of the offense;

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155 (c) Victimized more than one person during the course of
156 the criminal episode applicable to the offense;

157 (d) Committed the offense while under the jurisdiction of a
158 court for a felony offense under the laws of this state, for an
159 offense that is a felony in another jurisdiction, or for an
160 offense that would be a felony if that offense were committed in
161 this state; or

162 (e) Has previously been convicted of a violation of s.
163 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
164 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
165 (4); s. 847.0145; of any offense under a former statutory
166 designation which is similar in elements to an offense described
167 in this paragraph; or of any offense that is a felony in another
168 jurisdiction, or would be a felony if that offense were
169 committed in this state, and which is similar in elements to an
170 offense described in this paragraph,

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172 is a dangerous sexual felony offender, who must be sentenced to
173 a mandatory minimum term of 25 years imprisonment up to, and
174 including, life imprisonment.

175 Section 5. This act shall take effect October 1, 2010.