

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; including possession of child  
 10          pornography within specified offenses; providing  
 11          penalties; amending s. 921.0022, F.S.; conforming  
 12          provisions of the offense severity ranking chart of the  
 13          Criminal Punishment Code to changes made by the act;  
 14          reenacting s. 794.0115(2), F.S., relating to dangerous  
 15          sexual felony offenders and mandatory sentencing thereof,  
 16          to incorporate the amendment to s. 827.071, F.S., in a  
 17          reference thereto; providing an effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1. Paragraph (b) of subsection (1) of section  
 22           775.0847, Florida Statutes, is amended, a new paragraph (c) is  
 23           added to that subsection, and present paragraphs (c) through (f)  
 24           of that subsection are redesignated as paragraphs (d) through  
 25           (g), respectively, to read:

26           775.0847 Possession or promotion of certain images of  
 27           child pornography; reclassification.--

28           (1) For purposes of this section:

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

34 (c) "Minor" means a person who had not attained the age of  
35 18 years at the time the visual depiction was created, adapted,  
36 or modified, or whose image while a minor was used in creating,  
37 adapting, or modifying the visual depiction, and who is  
38 recognizable as an actual person by the person's facial  
39 features, likeness, or other distinguishing characteristics.

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

47 827.071 Sexual performance by a child; penalties.--

48 (1) As used in this section, the following definitions  
49 shall apply:

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

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

60 (c) "Minor" has the same meaning as provided in s.  
 61 775.0847.

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

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

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

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85 Section 3. Paragraph (e) of subsection (3) of section  
 86 921.0022, Florida Statutes, is amended to read:

87 921.0022 Criminal Punishment Code; offense severity  
 88 ranking chart.--

89 (3) OFFENSE SEVERITY RANKING CHART

90 (e) LEVEL 5

91

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.

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99	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
100	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
101	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
102	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
103	790.01 (2)	3rd	Carrying a concealed firearm.
104	790.162	2nd	Threat to throw or discharge destructive device.
105	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
106	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.

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107	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
108	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
109	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
110	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
111	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
112	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
113	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
114	812.131 (2) (b)	3rd	Robbery by sudden snatching.

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115	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
116	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
117	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
118	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
119	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.
120	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
	825.1025(4)	3rd	Lewd or lascivious exhibition in the

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presence of an elderly person or disabled adult.

121 827.071 (4) 2nd Possess with intent to promote any child pornography or other photographic material, motion picture, etc., which includes sexual conduct by a child.

122 827.071 (5) 3rd Possess any child pornography or other photographic material, motion picture, etc., which includes sexual conduct by a child.

123 839.13 (2) (b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

124 843.01 3rd Resist officer with violence to person; resist arrest with violence.

125 847.0135 (5) (b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

126 847.0137 (2) & 3rd Transmission of pornography by (3) electronic device or equipment.

127 847.0138 (2) & 3rd Transmission of material harmful to



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128	(3)		minors to a minor by electronic device or equipment.
129	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
130	893.13(1)(a)1.	2nd	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).
131	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.
132	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.

133

893.13(1)(f)1.      1st      Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.

134

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).

135

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

136

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

141 794.0115 Dangerous sexual felony offender; mandatory  
 142 sentencing.--

143 (2) Any person who is convicted of a violation of s.  
 144 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.  
 145 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or  
 146 (4); or s. 847.0145; or of any similar offense under a former  
 147 designation, which offense the person committed when he or she  
 148 was 18 years of age or older, and the person:

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

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

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

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

160 (e) Has previously been convicted of a violation of s.  
 161 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.  
 162 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or  
 163 (4); s. 847.0145; of any offense under a former statutory  
 164 designation which is similar in elements to an offense described  
 165 in this paragraph; or of any offense that is a felony in another  
 166 jurisdiction, or would be a felony if that offense were  
 167 committed in this state, and which is similar in elements to an  
 168 offense described in this paragraph,

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

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