

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Pafford offered the following:

2
3 **Amendment (with title amendment)**

4 Remove line 462 and insert:

5 Section 14. Effective October 1, 2011, subsections (1) and
6 (5) of section 827.071, Florida Statutes, are amended to read:

7 827.071 Sexual performance by a child; penalties.—

8 (1) As used in this section, the following definitions
9 shall apply:

10 (a) "Deviate sexual intercourse" means sexual conduct
11 between persons not married to each other consisting of contact
12 between the penis and the anus, the mouth and the penis, or the
13 mouth and the vulva.

14 (b) "Intentionally view" means to deliberately,
15 purposefully, and voluntarily view. Proof of intentional viewing
16 requires establishing more than a single image, motion picture,

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17 exhibition, show, image, data, computer depiction,
18 representation, or other presentation over any period of time.

19 (c)~~(b)~~ "Performance" means any play, motion picture,
20 photograph, or dance or any other visual representation
21 exhibited before an audience.

22 (d)~~(e)~~ "Promote" means to procure, manufacture, issue,
23 sell, give, provide, lend, mail, deliver, transfer, transmute,
24 publish, distribute, circulate, disseminate, present, exhibit,
25 or advertise or to offer or agree to do the same.

26 (e)~~(d)~~ "Sadomasochistic abuse" means flagellation or
27 torture by or upon a person, or the condition of being fettered,
28 bound, or otherwise physically restrained, for the purpose of
29 deriving sexual satisfaction from inflicting harm on another or
30 receiving such harm oneself.

31 (f)~~(e)~~ "Sexual battery" means oral, anal, or vaginal
32 penetration by, or union with, the sexual organ of another or
33 the anal or vaginal penetration of another by any other object;
34 however, "sexual battery" does not include an act done for a
35 bona fide medical purpose.

36 (g)~~(f)~~ "Sexual bestiality" means any sexual act between a
37 person and an animal involving the sex organ of the one and the
38 mouth, anus, or vagina of the other.

39 (h)~~(g)~~ "Sexual conduct" means actual or simulated sexual
40 intercourse, deviate sexual intercourse, sexual bestiality,
41 masturbation, or sadomasochistic abuse; actual lewd exhibition
42 of the genitals; actual physical contact with a person's clothed
43 or unclothed genitals, pubic area, buttocks, or, if such person
44 is a female, breast, with the intent to arouse or gratify the
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45 sexual desire of either party; or any act or conduct which
46 constitutes sexual battery or simulates that sexual battery is
47 being or will be committed. A mother's breastfeeding of her baby
48 does not under any circumstance constitute "sexual conduct."

49 (i)~~(h)~~ "Sexual performance" means any performance or part
50 thereof which includes sexual conduct by a child of less than 18
51 years of age.

52 (j)~~(i)~~ "Simulated" means the explicit depiction of conduct
53 set forth in paragraph (h) ~~(g)~~ which creates the appearance of
54 such conduct and which exhibits any uncovered portion of the
55 breasts, genitals, or buttocks.

56 (5)(a) It is unlawful for any person to knowingly possess,
57 control, or intentionally view a photograph, motion picture,
58 exhibition, show, representation, image, data, computer
59 depiction, or other presentation which, in whole or in part, he
60 or she knows to include any sexual conduct by a child. The
61 possession, control, or intentional viewing of each such
62 photograph, motion picture, exhibition, show, image, data,
63 computer depiction, representation, or presentation is a
64 separate offense. A person who ~~Whoever~~ violates this subsection
65 commits is guilty of a felony of the third degree, punishable as
66 provided in s. 775.082, s. 775.083, or s. 775.084.

67 (b) This subsection does not apply to material possessed,
68 controlled, or intentionally viewed as part of a law enforcement
69 investigation.

70 Section 15. Effective October 1, 2011, paragraph (e) of
71 subsection (3) of section 921.0022, Florida Statutes, is amended
72 to read:

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73 921.0022 Criminal Punishment Code; offense severity
74 ranking chart.—

75 (3) OFFENSE SEVERITY RANKING CHART

76 (e) LEVEL 5

77

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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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.
86		
624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
87		
626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
88		
790.01 (2)	3rd	Carrying a concealed firearm.
89		
790.162	2nd	Threat to throw or discharge destructive device.
90		
790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
91		
790.221 (1)	2nd	Possession of short-barreled

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shotgun or machine gun.

92

790.23 2nd Felons in possession of
firearms, ammunition, or
electronic weapons or devices.

93

800.04 (6) (c) 3rd Lewd or lascivious conduct;
offender less than 18 years.

94

800.04 (7) (b) 2nd Lewd or lascivious exhibition;
offender 18 years or older.

95

806.111 (1) 3rd Possess, manufacture, or
dispense fire bomb with intent
to damage any structure or
property.

96

812.0145 (2) (b) 2nd Theft from person 65 years of
age or older; \$10,000 or more
but less than \$50,000.

97

812.015 (8) 3rd Retail theft; property stolen is
valued at \$300 or more and one
or more specified acts.

98

812.019 (1) 2nd Stolen property; dealing in or
trafficking in.

99

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100	Amendment No. 812.131 (2) (b)	3rd	Robbery by sudden snatching.
101	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
102	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
103	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
104	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.
	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

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individuals.

105

817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

106

825.1025 (4)

3rd

Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

107

827.071 (4)

2nd

Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

108

827.071 (5)

3rd

Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

109

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.

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111	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
112	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
113	847.0137(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
114	847.0138(2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
115	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
116	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).
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s.

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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.

117

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.

118

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.

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134 conduct by a child; providing an exception; providing
135 penalties; amending s. 921.0022, F.S.; conforming
136 provisions of the offense severity ranking chart of the
137 Criminal Punishment Code to changes made to s. 827.071,
138 F.S., by the act; providing effective dates.