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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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05/04/2011 04:42 PM

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Senators Fasano and Benacquisto moved the following:

**Senate Amendment (with title amendment)**

Between lines 268 and 269

insert:

Section 11. Effective October 1, 2011, subsections (1) and (5) of section 827.071, Florida Statutes, are amended to read:

827.071 Sexual performance by a child; penalties.—

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

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



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14 mouth and the vulva.

15 (b) "Intentionally view" means to deliberately,  
16 purposefully, and voluntarily view. Proof of intentional viewing  
17 requires establishing more than a single image, motion picture,  
18 exhibition, show, image, data, computer depiction,  
19 representation, or other presentation over any period of time.

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

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

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

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

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

40 (h)~~(g)~~ "Sexual conduct" means actual or simulated sexual  
41 intercourse, deviate sexual intercourse, sexual bestiality,  
42 masturbation, or sadomasochistic abuse; actual lewd exhibition



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43 of the genitals; actual physical contact with a person's clothed  
44 or unclothed genitals, pubic area, buttocks, or, if such person  
45 is a female, breast, with the intent to arouse or gratify the  
46 sexual desire of either party; or any act or conduct which  
47 constitutes sexual battery or simulates that sexual battery is  
48 being or will be committed. A mother's breastfeeding of her baby  
49 does not under any circumstance constitute "sexual conduct."

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

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

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

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

71 Section 12. Effective October 1, 2011, paragraph (e) of



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72 subsection (3) of section 921.0022, Florida Statutes, is amended  
73 to read

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

76 (3) OFFENSE SEVERITY RANKING CHART

77 (e) LEVEL 5

78

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

85



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making workers' compensation claims.

86

440.381(2)            2nd    Submission of false, misleading, or  
incomplete information with the purpose  
of avoiding or reducing workers'  
compensation premiums.

87

624.401(4)(b)2.    2nd    Transacting insurance without a  
certificate or authority; premium  
collected \$20,000 or more but less than  
\$100,000.

88

626.902(1)(c)       2nd    Representing an unauthorized insurer;  
repeat offender.

89

790.01(2)            3rd    Carrying a concealed firearm.

90

790.162              2nd    Threat to throw or discharge destructive  
device.

91

790.163(1)           2nd    False report of deadly explosive or  
weapon of mass destruction.

92

790.221(1)           2nd    Possession of short-barreled shotgun or  
machine gun.

93

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



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94	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
95	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
96	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
97	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
98	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
99	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
100	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.



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103

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

104

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.

105

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.

106

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

107

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

108

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



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109 827.071 (5) 3rd Possess, control, or intentionally view  
any photographic material, motion  
110 picture, etc., which includes sexual  
conduct by a child.

110 839.13 (2) (b) 2nd Falsifying records of an individual in  
the care and custody of a state agency  
involving great bodily harm or death.

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

114 847.0138 3rd Transmission of material harmful to  
(2) & (3) 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),



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

117

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.

118

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.

119

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.

120

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.

121

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).

122

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

123

124

125    ===== T I T L E   A M E N D M E N T =====

126    And the title is amended as follows:

127            Delete line 52

128    and insert:

129            in a reference thereto; amending s. 827.071, F.S.;

130            defining the term "intentionally view"; prohibiting

131            controlling or intentionally viewing any photograph,

132            motion picture, exhibition, show, image, data,

133            computer depiction, representation, or other

134            presentation that includes sexual conduct by a child;

135            providing an exception; providing penalties; amending

136            s. 921.0022, F.S.; conforming provisions of the

137            offense severity ranking chart of the Criminal

138            Punishment Code to changes made to s. 827.071, F.S.,

139            by the act; amending s. 960.003, F.S.;