

1 A bill to be entitled
 2 An act relating to sexual performance by a child; amending
 3 s. 827.071, F.S.; defining the term "intentionally view";
 4 prohibiting controlling or intentionally viewing any
 5 photograph, motion picture, exhibition, show,
 6 representation of an image, data, computer depiction, or
 7 other presentation that includes sexual conduct by a
 8 child; providing penalties; amending s. 921.0022, F.S.;
 9 conforming provisions of the offense severity ranking
 10 chart of the Criminal Punishment Code to changes made by
 11 the act; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsections (1) and (5) of section 827.071,
 16 Florida Statutes, are amended to read:

17 827.071 Sexual performance by a child; penalties.—

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

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

24 (b) "Intentionally view" means to deliberately,
 25 purposefully, and voluntarily view.

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

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

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

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

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

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

56 (i)~~(h)~~ "Sexual performance" means any performance or part

HB 595

2011

57 | thereof which includes sexual conduct by a child of less than 18
 58 | years of age.

59 | ~~(j)(i)~~ "Simulated" means the explicit depiction of conduct
 60 | set forth in paragraph (h) ~~(g)~~ which creates the appearance of
 61 | such conduct and which exhibits any uncovered portion of the
 62 | breasts, genitals, or buttocks.

63 | (5) It is unlawful for any person to knowingly possess,
 64 | control, or intentionally view any a photograph, motion picture,
 65 | exhibition, show, representation of an image, data, computer
 66 | depiction, or other presentation which, in whole or in part, he
 67 | or she knows to include any sexual conduct by a child. The
 68 | possession, control, or viewing of each such photograph, motion
 69 | picture, exhibition, show, representation of an image, data,
 70 | computer depiction, or presentation is a separate offense. A
 71 | person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~
 72 | a felony of the third degree, punishable as provided in s.
 73 | 775.082, s. 775.083, or s. 775.084.

74 | Section 2. Paragraph (e) of subsection (3) of section
 75 | 921.0022, Florida Statutes, is amended to read:

76 | 921.0022 Criminal Punishment Code; offense severity
 77 | ranking chart.—

78 | (3) OFFENSE SEVERITY RANKING CHART

79 | (e) LEVEL 5

80 |

Florida	Felony	
Statute	Degree	Description

81 |

HB 595

2011

82	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
83	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
84	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
85	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
86	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
87	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
88	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of

HB 595

2011

			avoiding or reducing workers' compensation premiums.
89	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
90	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
91	790.01 (2)	3rd	Carrying a concealed firearm.
92	790.162	2nd	Threat to throw or discharge destructive device.
93	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
94	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
95	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
96			

HB 595

2011

97	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
98	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
99	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
100	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
101	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
102	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
103	812.131 (2) (b)	3rd	Robbery by sudden snatching.
104	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.

HB 595

2011

105	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
106	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
107	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.
108	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.
	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or

HB 595

2011

reencoder.

109

825.1025(4)

3rd

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

110

827.071(4)

2nd

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

111

827.071(5)

3rd

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

112

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.

113

843.01

3rd

Resist officer with violence to person; resist arrest with violence.

114

HB 595

2011

115	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
116	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
117	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
118	874.05 (2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
119	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. 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.,

HB 595

2011

(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.

120

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.

121

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.

122

893.13(1)(f)1. 1st Sell, manufacture, or deliver

HB 595

2011

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.

123

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).

124

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

125

126 Section 3. This act shall take effect October 1, 2011.