

By the Committee on Criminal Justice; and Senators Benacquisto and Gaetz

591-03795-11

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

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

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

18 827.071 Sexual performance by a child; penalties.—

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

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

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

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

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

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

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

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

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

57 (i)~~(h)~~ "Sexual performance" means any performance or part
58 thereof which includes sexual conduct by a child of less than 18

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59 years of age.

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

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

75 Section 2. Paragraph (e) of subsection (3) of section
 76 921.0022, Florida Statutes, is amended to read:

77 921.0022 Criminal Punishment Code; offense severity ranking
 78 chart.-

79 (3) OFFENSE SEVERITY RANKING CHART

80 (e) LEVEL 5

81

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.

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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.

89

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

90

624.401 (4) (b) 2. 2nd Transacting insurance without a
certificate or authority;

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premium collected \$20,000 or
more but less than \$100,000.

91

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

92

790.01 (2) 3rd Carrying a concealed firearm.

93

790.162 2nd Threat to throw or discharge
destructive device.

94

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

95

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

96

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

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

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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.

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) 3rd Filing false financial
& (3)(a) statements, making false
entries of material fact or

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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.

109

817.625 (2) (b)

2nd

Second or subsequent fraudulent
use of scanning device or
reencoder.

110

825.1025 (4)

3rd

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

111

827.071 (4)

2nd

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

112

827.071 (5)

3rd

Possess, control, or

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

113

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.

114

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

115

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

116

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

117

847.0138(2) & 3rd Transmission of material harmful
 (3) 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.

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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).

120

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.

121

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.

122

893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis or other drug prohibited under 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) within
 1,000 feet of property used for
 religious services or a
 specified business site.

123

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.

124

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).

125

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

126

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