

By the Committees on Judiciary; and Criminal Justice; and
Senators Benacquisto and Gaetz

590-04419-11

2011846c2

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 an exception;
9 providing penalties; amending s. 921.0022, F.S.;
10 conforming provisions of the offense severity ranking
11 chart of the Criminal Punishment Code to changes made
12 by the act; providing 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. Proof of intentional viewing
27 requires establishing more than a single image, motion picture,
28 exhibition, show, image, data, computer depiction,
29 representation, or other presentation over any period of time.

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

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

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

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

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

50 (h)~~(g)~~ "Sexual conduct" means actual or simulated sexual
51 intercourse, deviate sexual intercourse, sexual bestiality,
52 masturbation, or sadomasochistic abuse; actual lewd exhibition
53 of the genitals; actual physical contact with a person's clothed
54 or unclothed genitals, pubic area, buttocks, or, if such person
55 is a female, breast, with the intent to arouse or gratify the
56 sexual desire of either party; or any act or conduct which
57 constitutes sexual battery or simulates that sexual battery is
58 being or will be committed. A mother's breastfeeding of her baby

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59 does not under any circumstance constitute "sexual conduct."

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

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

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

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

81 Section 2. Paragraph (e) of subsection (3) of section
82 921.0022, Florida Statutes, is amended to read:

83 921.0022 Criminal Punishment Code; offense severity ranking
84 chart.—

85 (3) OFFENSE SEVERITY RANKING CHART

86 (e) LEVEL 5

87

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	Florida Statute	Felony Degree	Description
88	316.027 (1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
89	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
90	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
91	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
92	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
93	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
94	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
95	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with

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the purpose of avoiding or
reducing workers' compensation
premiums.

96

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

97

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

98

790.01 (2) 3rd Carrying a concealed firearm.

99

790.162 2nd Threat to throw or discharge
destructive device.

100

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

101

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

102

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

103

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

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104

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

105

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

106

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

107

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

108

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

109

812.131 (2) (b) 3rd Robbery by sudden snatching.

110

812.16 (2) 3rd Owning, operating, or conducting
a chop shop.

111

817.034 (4) (a) 2. 2nd Communications fraud, value
\$20,000 to \$50,000.

112

817.234 (11) (b) 2nd Insurance fraud; property value

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

113

817.2341 (1), (2) (a) 3rd
& (3) (a)

Filing false financial
statements, making false
entries of material fact or
false statements regarding
property values relating to the
solvency of an insuring entity.

114

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.

115

817.625 (2) (b) 2nd

Second or subsequent fraudulent
use of scanning device or
reencoder.

116

825.1025 (4) 3rd

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

117

827.071 (4) 2nd

Possess with intent to promote

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

118

827.071(5)

3rd

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

119

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.

120

843.01

3rd

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

121

847.0135(5)(b)

2nd

Lewd or lascivious exhibition
 using computer; offender 18
 years or older.

122

847.0137(2) &
 (3)

3rd

Transmission of pornography by
 electronic device or equipment.

123

847.0138(2) &

3rd

Transmission of material harmful

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(3) to minors to a minor by
electronic device or equipment.

124

874.05(2) 2nd Encouraging or recruiting
another to join a criminal gang;
second or subsequent offense.

125

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).

126

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.

127

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.

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drugs) within 1,000 feet of university.

128

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.

129

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.

130

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).

131

893.1351(1) 3rd Ownership, lease, or rental for trafficking in or manufacturing

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of controlled substance.

132

133

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