

HB 1385

2012

1 A bill to be entitled
2 An act relating to child pornography; amending s.
3 775.0847, F.S.; revising the definition of the term
4 "child pornography" to include visual depictions in
5 which it appears that a minor is engaging in sexual
6 conduct; providing that proof of the identity of a
7 minor is not required; defining the term "minor";
8 amending s. 827.071, F.S.; defining the terms "child
9 pornography" and "minor"; conforming cross-references;
10 including possession of child pornography within
11 specified offenses; providing penalties; amending s.
12 921.0022, F.S.; conforming provisions of the offense
13 severity ranking chart of the Criminal Punishment Code
14 to changes made by the act; reenacting s. 794.0115(2),
15 F.S., relating to dangerous sexual felony offenders
16 and mandatory sentencing thereof, to incorporate the
17 amendment to s. 827.071, F.S., in references thereto;
18 providing an effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Paragraph (b) of subsection (1) of section
23 775.0847, Florida Statutes, is amended, a new paragraph (c) is
24 added to that subsection, and present paragraphs (c) through (f)
25 of that subsection are redesignated as paragraphs (d) through
26 (g), respectively, to read:

27 775.0847 Possession or promotion of certain images of
28 child pornography; reclassification.—

29 (1) For purposes of this section:

30 (b) "Child pornography" means any image depicting a minor
 31 engaged in sexual conduct or such visual depiction that has been
 32 created, adapted, or modified to appear that a minor is engaging
 33 in sexual conduct. Proof of the identity of the minor is not
 34 required in order to find a violation of this section.

35 (c) "Minor" means a person who had not attained the age of
 36 18 years at the time the visual depiction was created, adapted,
 37 or modified, or whose image while a minor was used in creating,
 38 adapting, or modifying the visual depiction, and who is
 39 recognizable as an actual person by the person's facial
 40 features, likeness, or other distinguishing characteristics.

41 Section 2. New paragraphs (a) and (d) are added to
 42 subsection (1) of section 827.071, Florida Statutes, present
 43 paragraphs (a) through (j) of that subsection are redesignated
 44 as paragraphs (b), (c), and (e) through (l) of that subsection,
 45 respectively, and present paragraph (j) of subsection (1),
 46 subsection (4), and paragraph (a) of subsection (5) of that
 47 section are amended, to read:

48 827.071 Sexual performance by a child; penalties.—

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

51 (a) "Child pornography" means any visual depiction,
 52 including, but not limited to, any photograph, film, video,
 53 picture, computer or computer-generated image or picture, or
 54 digitally created image or picture, whether made or produced by
 55 electronic, mechanical, or other means, of sexual conduct, where
 56 the production of such visual depiction involves the use of a

57 minor engaging in sexual conduct, or such visual depiction has
 58 been created, adapted, or modified to appear that a minor is
 59 engaging in sexual conduct. Proof of the identity of the minor
 60 is not required in order to find a violation of this section.

61 (d) "Minor" has the same meaning as provided in s.
 62 775.0847.

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

67 (4) It is unlawful for any person to possess with the
 68 intent to promote any child pornography or any other photograph,
 69 motion picture, exhibition, show, representation, or other
 70 presentation which, in whole or in part, includes any sexual
 71 conduct by a child. The possession of three or more copies of
 72 such photograph, motion picture, representation, or presentation
 73 is prima facie evidence of an intent to promote. Whoever
 74 violates this subsection commits ~~is guilty of~~ a felony of the
 75 second degree, punishable as provided in s. 775.082, s. 775.083,
 76 or s. 775.084.

77 (5) (a) It is unlawful for any person to knowingly possess,
 78 control, or intentionally view child pornography or any other a
 79 photograph, motion picture, exhibition, show, representation,
 80 image, data, computer depiction, or other presentation which, in
 81 whole or in part, he or she knows to include any sexual conduct
 82 by a child. The possession, control, or intentional viewing of
 83 each such photograph, motion picture, exhibition, show, image,
 84 data, computer depiction, representation, or presentation is a

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85 separate offense. A person who violates this paragraph
 86 ~~subsection~~ commits a felony of the third degree, punishable as
 87 provided in s. 775.082, s. 775.083, or s. 775.084.

88 Section 3. Paragraph (e) of subsection (3) of section
 89 921.0022, Florida Statutes, is amended to read:

90 921.0022 Criminal Punishment Code; offense severity
 91 ranking chart.—

92 (3) OFFENSE SEVERITY RANKING CHART

93 (e) LEVEL 5

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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.

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100	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
101	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
102	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
103	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
104	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
105	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
106	790.01 (2)	3rd	Carrying a concealed firearm.
	790.162	2nd	Threat to throw or discharge

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destructive device.

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

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

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

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

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

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

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

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115	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
116	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
117	812.131 (2) (b)	3rd	Robbery by sudden snatching.
118	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
119	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
120	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
121	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

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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.

122 817.625 (2) (b) 2nd Second or subsequent fraudulent
 use of scanning device or
 reencoder.

123 825.1025 (4) 3rd Lewd or lascivious exhibition
 in the presence of an elderly
 person or disabled adult.

124 827.071 (4) 2nd Possess with intent to promote
 any child pornography or other
 photographic material, motion
 picture, etc., which includes
 sexual conduct by a child.

125 827.071 (5) 3rd Possess, control, or
 intentionally view any child
pornography or other
 photographic material, motion

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picture, etc., which includes sexual conduct by a child.

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

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

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

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847.0138 3rd Transmission of material (2) & (3) harmful to minors to a minor by electronic device or equipment.

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

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offense.

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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).

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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.

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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.

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136	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.
137	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.
138	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).
138	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing

of controlled substance.

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Section 4. For the purpose of incorporating the amendment made by this act to section 827.071, Florida Statutes, in references thereto, subsection (2) of section 794.0115, Florida Statutes, is reenacted to read:

794.0115 Dangerous sexual felony offender; mandatory sentencing.—

(2) Any person who is convicted of a violation of s. 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); or s. 847.0145; or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person:

(a) Caused serious personal injury to the victim as a result of the commission of the offense;

(b) Used or threatened to use a deadly weapon during the commission of the offense;

(c) Victimized more than one person during the course of the criminal episode applicable to the offense;

(d) Committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state; or

(e) Has previously been convicted of a violation of s. 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or

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166 (4); s. 847.0145; of any offense under a former statutory
167 designation which is similar in elements to an offense described
168 in this paragraph; or of any offense that is a felony in another
169 jurisdiction, or would be a felony if that offense were
170 committed in this state, and which is similar in elements to an
171 offense described in this paragraph,

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173 is a dangerous sexual felony offender, who must be sentenced to
174 a mandatory minimum term of 25 years imprisonment up to, and
175 including, life imprisonment.

176 Section 5. This act shall take effect October 1, 2012.