

By Senator Storms

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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 made by this act to s. 827.071, F.S., in a
18 reference thereto; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsection (1) of section 775.0847, Florida
23 Statutes, is amended to read:

24 775.0847 Possession or promotion of certain images of child
25 pornography; reclassification.—

26 (1) As used in ~~For purposes of~~ this section:

27 (a) "Child" means any person, whose identity is known or
28 unknown, less than 18 years of age.

29 (b) "Child pornography" means any image depicting a minor

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30 engaged in sexual conduct or such visual depiction that has been
31 created, adapted, or modified to appear that a minor is engaging
32 in sexual conduct. Proof of the identity of the minor is not
33 required in order to find a violation of this section.

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

40 (d)~~(e)~~ "Sadomasochistic abuse" means flagellation or
41 torture by or upon a person or the condition of being fettered,
42 bound, or otherwise physically restrained, for the purpose of
43 deriving sexual satisfaction, or satisfaction brought about as a
44 result of sadistic violence, from inflicting harm on another or
45 receiving such harm oneself.

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

51 (f)~~(e)~~ "Sexual bestiality" means any sexual act, actual or
52 simulated, between a person and an animal involving the sex
53 organ of the one and the mouth, anus, or vagina of the other.

54 (g)~~(f)~~ "Sexual conduct" means actual or simulated sexual
55 intercourse, deviate sexual intercourse, sexual bestiality,
56 masturbation, or sadomasochistic abuse; actual lewd exhibition
57 of the genitals; actual physical contact with a person's clothed
58 or unclothed genitals, pubic area, buttocks, or, if the ~~such~~

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59 person is a female, breast with the intent to arouse or gratify
60 the sexual desire of either party; or any act or conduct which
61 constitutes sexual battery or simulates that sexual battery is
62 being or will be committed. A mother's breastfeeding of her baby
63 does not under any circumstance constitute "sexual conduct."

64 Section 2. Subsections (1), (4), and (5) of section
65 827.071, Florida Statutes, are amended to read:

66 827.071 Sexual performance by a child; penalties.—

67 (1) As used in this section, the term ~~following definitions~~
68 ~~shall apply:~~

69 (a) "Child pornography" means any visual depiction,
70 including, but not limited to, any photograph, film, video,
71 picture, computer or computer-generated image or picture, or
72 digitally created image or picture, whether made or produced by
73 electronic, mechanical, or other means, of sexual conduct, if
74 the production of such visual depiction involves the use of a
75 minor engaging in sexual conduct, or such visual depiction has
76 been created, adapted, or modified to appear that a minor is
77 engaging in sexual conduct. Proof of the identity of the minor
78 is not required in order to find a violation of this section.

79 (b) ~~(a)~~ "Deviate sexual intercourse" means sexual conduct
80 between persons not married to each other consisting of contact
81 between the penis and the anus, the mouth and the penis, or the
82 mouth and the vulva.

83 (c) ~~(b)~~ "Intentionally view" means to deliberately,
84 purposefully, and voluntarily view. Proof of intentional viewing
85 requires establishing more than a single image, motion picture,
86 exhibition, show, image, data, computer depiction,
87 representation, or other presentation over any period of time.

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88 (d) "Minor" has the same meaning as provided in s.
89 775.0847.

90 (e)~~(e)~~ "Performance" means any play, motion picture,
91 photograph, or dance or any other visual representation
92 exhibited before an audience.

93 (f)~~(d)~~ "Promote" means to procure, manufacture, issue,
94 sell, give, provide, lend, mail, deliver, transfer, transmute,
95 publish, distribute, circulate, disseminate, present, exhibit,
96 or advertise or to offer or agree to do the same.

97 (g)~~(e)~~ "Sadomasochistic abuse" means flagellation or
98 torture by or upon a person, or the condition of being fettered,
99 bound, or otherwise physically restrained, for the purpose of
100 deriving sexual satisfaction from inflicting harm on another or
101 receiving such harm oneself.

102 (h)~~(f)~~ "Sexual battery" means oral, anal, or vaginal
103 penetration by, or union with, the sexual organ of another or
104 the anal or vaginal penetration of another by any other object;
105 however, "sexual battery" does not include an act done for a
106 bona fide medical purpose.

107 (i)~~(g)~~ "Sexual bestiality" means any sexual act between a
108 person and an animal involving the sex organ of the one and the
109 mouth, anus, or vagina of the other.

110 (j)~~(h)~~ "Sexual conduct" means actual or simulated sexual
111 intercourse, deviate sexual intercourse, sexual bestiality,
112 masturbation, or sadomasochistic abuse; actual lewd exhibition
113 of the genitals; actual physical contact with a person's clothed
114 or unclothed genitals, pubic area, buttocks, or, if the ~~such~~
115 person is a female, breast, with the intent to arouse or gratify
116 the sexual desire of either party; or any act or conduct that

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117 ~~which~~ constitutes sexual battery or simulates that sexual
118 battery is being or will be committed. A mother's breastfeeding
119 of her baby does not under any circumstance constitute "sexual
120 conduct."

121 (k) ~~(i)~~ "Sexual performance" means any performance or part
122 thereof which includes sexual conduct by a child of less than 18
123 years of age.

124 (l) ~~(j)~~ "Simulated" means the explicit depiction of conduct
125 set forth in paragraph (j) ~~(h)~~ which creates the appearance of
126 such conduct and which exhibits any uncovered portion of the
127 breasts, genitals, or buttocks.

128 (4) It is unlawful for a ~~any~~ person to possess with the
129 intent to promote any child pornography or any other photograph,
130 motion picture, exhibition, show, representation, or other
131 presentation that ~~which~~, in whole or in part, includes any
132 sexual conduct by a child. The possession of three or more
133 copies of such photograph, motion picture, representation, or
134 presentation is prima facie evidence of an intent to promote.
135 Whoever violates this subsection commits ~~is guilty of~~ a felony
136 of the second degree, punishable as provided in s. 775.082, s.
137 775.083, or s. 775.084.

138 (5) (a) It is unlawful for a ~~any~~ person to knowingly
139 possess, control, or intentionally view child pornography or any
140 other ~~a~~ photograph, motion picture, exhibition, show,
141 representation, image, data, computer depiction, or other
142 presentation which, in whole or in part, he or she knows to
143 include any sexual conduct by a child. The possession, control,
144 or intentional viewing of each such photograph, motion picture,
145 exhibition, show, image, data, computer depiction,

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146 representation, or presentation is a separate offense. A person
 147 who violates this subsection commits a felony of the third
 148 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 149 775.084.

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

153 Section 3. Paragraph (e) of subsection (3) of section
 154 921.0022, Florida Statutes, is amended to read:

155 921.0022 Criminal Punishment Code; offense severity ranking
 156 chart.—

157 (3) OFFENSE SEVERITY RANKING CHART

158 (e) LEVEL 5

159

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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165	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
166	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
167	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
168	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
169	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
170	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
171	790.01(2)	3rd	Carrying a concealed firearm.
172	790.162	2nd	Threat to throw or discharge destructive device.
172	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.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
812.019 (1)	2nd	Stolen property; dealing in or trafficking in.

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

183

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

184

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

185

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

186

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.

187

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.

188

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

825.1025(4) 3rd Lewd or lascivious exhibition in the

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presence of an elderly person or disabled adult.

189

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.

190

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

191

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.

192

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

193

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

194

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

195

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

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or equipment.

196

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

197

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).

198

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.

199

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.

200

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.,

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(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.

201

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.

202

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).

203

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

204

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

209 794.0115 Dangerous sexual felony offender; mandatory
 210 sentencing.—

211 (2) Any person who is convicted of a violation of s.
 212 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.

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213 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
214 (4); or s. 847.0145; or of any similar offense under a former
215 designation, which offense the person committed when he or she
216 was 18 years of age or older, and the person:

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

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

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

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

228 (e) Has previously been convicted of a violation of s.
229 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
230 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
231 (4); s. 847.0145; of any offense under a former statutory
232 designation which is similar in elements to an offense described
233 in this paragraph; or of any offense that is a felony in another
234 jurisdiction, or would be a felony if that offense were
235 committed in this state, and which is similar in elements to an
236 offense described in this paragraph,

237
238 is a dangerous sexual felony offender, who must be sentenced to
239 a mandatory minimum term of 25 years imprisonment up to, and
240 including, life imprisonment.

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