

CS/HB 437

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1 A bill to be entitled
2 An act relating to protection of minors; providing a
3 short title; amending s. 775.21, F.S.; requiring a
4 person convicted of a second or subsequent violation
5 of specified video voyeurism provisions to register as
6 a sexual predator; amending s. 827.071, F.S.;
7 providing that if more than one child is involved in a
8 violation of provisions prohibiting sexual performance
9 by a child, each child involved in the violation
10 creates a separate offense; amending s. 943.0435,
11 F.S.; requiring a person convicted of video voyeurism
12 violations to register as a sexual offender; amending
13 ss. 944.606 and 944.607, F.S.; revising the definition
14 of the term "sexual offender" to include persons
15 convicted of specified video voyeurism provisions;
16 amending s. 810.145, F.S.; increasing the
17 classification of specified video voyeurism offenses
18 involving minors; amending s. 921.0022, F.S.; ranking
19 a violation of s. 810.145(8)(b), F.S., above its
20 default value for purposes of the offense severity
21 ranking chart of the Criminal Punishment Code;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. This act may be cited as the "Protect Our
27 Children Act of 2012."

28 Section 2. Paragraph (a) of subsection (4) of section
 29 775.21, Florida Statutes, is amended to read:

30 775.21 The Florida Sexual Predators Act.—

31 (4) SEXUAL PREDATOR CRITERIA.—

32 (a) For a current offense committed on or after October 1,
 33 1993, upon conviction, an offender shall be designated as a
 34 "sexual predator" under subsection (5), and subject to
 35 registration under subsection (6) and community and public
 36 notification under subsection (7) if:

37 1. The felony is:

38 a. A capital, life, or first-degree felony violation, or
 39 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 40 is a minor and the defendant is not the victim's parent or
 41 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 42 violation of a similar law of another jurisdiction; or

43 b. Any felony violation, or any attempt thereof, of s.
 44 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 45 minor and the defendant is not the victim's parent or guardian;
 46 s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 47 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025(2)(b); s.
 48 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a
 49 violation of a similar law of another jurisdiction, and the
 50 offender has previously been convicted of or found to have
 51 committed, or has pled nolo contendere or guilty to, regardless
 52 of adjudication, any violation of s. 787.01, s. 787.02, or s.
 53 787.025(2)(c), where the victim is a minor and the defendant is
 54 not the victim's parent or guardian; s. 794.011, excluding s.
 55 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.

56 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0133; s.
 57 847.0135, excluding s. 847.0135(6); s. 847.0145; or s.
 58 985.701(1); or a violation of a similar law of another
 59 jurisdiction;

60 2. The offender has not received a pardon for any felony
 61 or similar law of another jurisdiction that is necessary for the
 62 operation of this paragraph; and

63 3. A conviction of a felony or similar law of another
 64 jurisdiction necessary to the operation of this paragraph has
 65 not been set aside in any postconviction proceeding.

66 Section 3. Paragraph (a) of subsection (5) of section
 67 827.071, Florida Statutes, is amended to read:

68 827.071 Sexual performance by a child; penalties.—

69 (5)(a) It is unlawful for any person to knowingly possess,
 70 control, or intentionally view a photograph, motion picture,
 71 exhibition, show, representation, image, data, computer
 72 depiction, or other presentation which, in whole or in part, he
 73 or she knows to include any sexual conduct by a child. The
 74 possession, control, or intentional viewing of each such
 75 photograph, motion picture, exhibition, show, image, data,
 76 computer depiction, representation, or presentation is a
 77 separate offense. If such photograph, motion picture,
 78 exhibition, show, representation, image, data, computer
 79 depiction, or other presentation includes sexual conduct by more
 80 than one child, then each such child in each such photograph,
 81 motion picture, exhibition, show, representation, image, data,
 82 computer depiction, or other presentation that is knowingly
 83 possessed, controlled, or intentionally viewed is a separate

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

87 Section 4. Paragraph (a) of subsection (1) of section
 88 943.0435, Florida Statutes, is amended to read:

89 943.0435 Sexual offenders required to register with the
 90 department; penalty.—

91 (1) As used in this section, the term:

92 (a)1. "Sexual offender" means a person who meets the
 93 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 94 subparagraph c., or sub-subparagraph d., as follows:

95 a.(I) Has been convicted of committing, or attempting,
 96 soliciting, or conspiring to commit, any of the criminal
 97 offenses proscribed in the following statutes in this state or
 98 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
 99 or s. 787.025(2)(c), where the victim is a minor and the
 100 defendant is not the victim's parent or guardian; s. 794.011,
 101 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
 102 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.
 103 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 104 847.0145; or s. 985.701(1); or any similar offense committed in
 105 this state which has been redesignated from a former statute
 106 number to one of those listed in this sub-sub-subparagraph; and

107 (II) Has been released on or after October 1, 1997, from
 108 the sanction imposed for any conviction of an offense described
 109 in sub-sub-subparagraph (I). For purposes of sub-sub-
 110 subparagraph (I), a sanction imposed in this state or in any
 111 other jurisdiction includes, but is not limited to, a fine,

112 probation, community control, parole, conditional release,
 113 control release, or incarceration in a state prison, federal
 114 prison, private correctional facility, or local detention
 115 facility;

116 b. Establishes or maintains a residence in this state and
 117 who has not been designated as a sexual predator by a court of
 118 this state but who has been designated as a sexual predator, as
 119 a sexually violent predator, or by another sexual offender
 120 designation in another state or jurisdiction and was, as a
 121 result of such designation, subjected to registration or
 122 community or public notification, or both, or would be if the
 123 person were a resident of that state or jurisdiction, without
 124 regard to whether the person otherwise meets the criteria for
 125 registration as a sexual offender;

126 c. Establishes or maintains a residence in this state who
 127 is in the custody or control of, or under the supervision of,
 128 any other state or jurisdiction as a result of a conviction for
 129 committing, or attempting, soliciting, or conspiring to commit,
 130 any of the criminal offenses proscribed in the following
 131 statutes or similar offense in another jurisdiction: s. 787.01,
 132 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 133 the defendant is not the victim's parent or guardian; s.
 134 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 135 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s.
 136 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
 137 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense
 138 committed in this state which has been redesignated from a
 139 former statute number to one of those listed in this sub-

140 subparagraph; or

141 d. On or after July 1, 2007, has been adjudicated
 142 delinquent for committing, or attempting, soliciting, or
 143 conspiring to commit, any of the criminal offenses proscribed in
 144 the following statutes in this state or similar offenses in
 145 another jurisdiction when the juvenile was 14 years of age or
 146 older at the time of the offense:

147 (I) Section 794.011, excluding s. 794.011(10);

148 (II) Section 800.04(4)(b) where the victim is under 12
 149 years of age or where the court finds sexual activity by the use
 150 of force or coercion;

151 (III) Section 800.04(5)(c)1. where the court finds
 152 molestation involving unclothed genitals; or

153 (IV) Section 800.04(5)(d) where the court finds the use of
 154 force or coercion and unclothed genitals.

155 2. For all qualifying offenses listed in sub-subparagraph
 156 (1)(a)1.d., the court shall make a written finding of the age of
 157 the offender at the time of the offense.

158
 159 For each violation of a qualifying offense listed in this
 160 subsection, the court shall make a written finding of the age of
 161 the victim at the time of the offense. For a violation of s.
 162 800.04(4), the court shall additionally make a written finding
 163 indicating that the offense did or did not involve sexual
 164 activity and indicating that the offense did or did not involve
 165 force or coercion. For a violation of s. 800.04(5), the court
 166 shall additionally make a written finding that the offense did
 167 or did not involve unclothed genitals or genital area and that

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168 the offense did or did not involve the use of force or coercion.

169 Section 5. Paragraph (b) of subsection (1) of section
170 944.606, Florida Statutes, is amended to read:

171 944.606 Sexual offenders; notification upon release.—

172 (1) As used in this section:

173 (b) "Sexual offender" means a person who has been
174 convicted of committing, or attempting, soliciting, or
175 conspiring to commit, any of the criminal offenses proscribed in
176 the following statutes in this state or similar offenses in
177 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
178 where the victim is a minor and the defendant is not the
179 victim's parent or guardian; s. 794.011, excluding s.
180 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
181 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
182 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
183 or s. 985.701(1); or any similar offense committed in this state
184 which has been redesignated from a former statute number to one
185 of those listed in this subsection, when the department has
186 received verified information regarding such conviction; an
187 offender's computerized criminal history record is not, in and
188 of itself, verified information.

189 Section 6. Paragraph (a) of subsection (1) of section
190 944.607, Florida Statutes, is amended to read:

191 944.607 Notification to Department of Law Enforcement of
192 information on sexual offenders.—

193 (1) As used in this section, the term:

194 (a) "Sexual offender" means a person who is in the custody
195 or control of, or under the supervision of, the department or is

196 | in the custody of a private correctional facility:

197 | 1. On or after October 1, 1997, as a result of a
 198 | conviction for committing, or attempting, soliciting, or
 199 | conspiring to commit, any of the criminal offenses proscribed in
 200 | the following statutes in this state or similar offenses in
 201 | another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 202 | where the victim is a minor and the defendant is not the
 203 | victim's parent or guardian; s. 794.011, excluding s.
 204 | 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 205 | 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 206 | excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 207 | or s. 985.701(1); or any similar offense committed in this state
 208 | which has been redesignated from a former statute number to one
 209 | of those listed in this paragraph; or

210 | 2. Who establishes or maintains a residence in this state
 211 | and who has not been designated as a sexual predator by a court
 212 | of this state but who has been designated as a sexual predator,
 213 | as a sexually violent predator, or by another sexual offender
 214 | designation in another state or jurisdiction and was, as a
 215 | result of such designation, subjected to registration or
 216 | community or public notification, or both, or would be if the
 217 | person were a resident of that state or jurisdiction, without
 218 | regard as to whether the person otherwise meets the criteria for
 219 | registration as a sexual offender.

220 | Section 7. Subsection (8) of section 810.145, Florida
 221 | Statutes, are amended to read:

222 | 810.145 Video voyeurism.—
 223 | (8) (a) A person who is:

224 1. Eighteen years of age or older who is responsible for
 225 the welfare of a child younger than 16 years of age, regardless
 226 of whether the person knows or has reason to know the age of the
 227 child, and who commits an offense under this section against
 228 that child;

229 2. Eighteen years of age or older who is employed at a
 230 private school as defined in s. 1002.01; a school as defined in
 231 s. 1003.01; or a voluntary prekindergarten education program as
 232 described in s. 1002.53(3)(a), (b), or (c) and who commits an
 233 offense under this section against a student of the private
 234 school, school, or voluntary prekindergarten education program;
 235 or

236 3. Twenty-four years of age or older who commits an
 237 offense under this section against a child younger than 16 years
 238 of age, regardless of whether the person knows or has reason to
 239 know the age of the child

240
 241 commits a felony of the second ~~third~~ degree, punishable as
 242 provided in s. 775.082, s. 775.083, or s. 775.084.

243 (b) A person who violates this subsection and who has
 244 previously been convicted of or adjudicated delinquent for any
 245 violation of this section commits a felony of the second degree,
 246 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

247 Section 8. Paragraph (f) of subsection (3) of section
 248 921.0022, Florida Statutes, is amended to read:

249 921.0022 Criminal Punishment Code; offense severity
 250 ranking chart.—

251 (3) OFFENSE SEVERITY RANKING CHART

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252 (f) LEVEL 6

253

Florida	Felony	
Statute	Degree	Description

254

316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
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255

499.0051 (3)	2nd	Knowing forgery of pedigree papers.
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256

499.0051 (4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
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257

499.0051 (5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
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258

775.0875 (1)	3rd	Taking firearm from law enforcement officer.
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259

784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
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784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
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262	784.041	3rd	Felony battery; domestic battery by strangulation.
263	784.048 (3)	3rd	Aggravated stalking; credible threat.
264	784.048 (5)	3rd	Aggravated stalking of person under 16.
265	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
266	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
267	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
268	784.081 (2)	2nd	Aggravated assault on specified official or employee.
269	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
	784.083 (2)	2nd	Aggravated assault on code

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inspector.

270

787.02 (2) 3rd False imprisonment; restraining with purpose other than those in s. 787.01.

271

790.115 (2) (d) 2nd Discharging firearm or weapon on school property.

272

790.161 (2) 2nd Make, possess, or throw destructive device with intent to do bodily harm or damage property.

273

790.164 (1) 2nd False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

274

790.19 2nd Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.

275

794.011 (8) (a) 3rd Solicitation of minor to participate in sexual activity by custodial adult.

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277	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
278	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
279	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
280	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
281	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
282	<u>810.145 (8) (b)</u>	<u>2nd</u>	<u>Video voyeurism; certain minor victims; 2nd or subsequent offense.</u>
283	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.

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284	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
285	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
286	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
287	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
288	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
289	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
290	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
291	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.

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292	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
293	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
294	827.03(1)	3rd	Abuse of a child.
295	827.03(3)(c)	3rd	Neglect of a child.
296	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
297	836.05	2nd	Threats; extortion.
298	836.10	2nd	Written threats to kill or do bodily injury.
299	843.12	3rd	Aids or assists person to escape.
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene

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materials depicting minors.

300

847.012 3rd Knowingly using a minor in the production of materials harmful to minors.

301

847.0135(2) 3rd Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

302

914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury.

303

944.35(3)(a)2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

304

944.40 2nd Escapes.

305

944.46 3rd Harboring, concealing, aiding escaped prisoners.

306

944.47(1)(a)5. 2nd Introduction of contraband

