



372158

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2012	.	
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The Committee on Criminal Justice (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 23 and 24
insert:

Section 2. Subsection (1) of section 775.0847, Florida Statutes, is amended to read:

775.0847 Possession or promotion of certain images of child pornography; reclassification.-

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

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

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



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

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

23 (d)(e) "Sadomasochistic abuse" means flagellation or
24 torture by or upon a person or the condition of being fettered,
25 bound, or otherwise physically restrained, for the purpose of
26 deriving sexual satisfaction, or satisfaction brought about as a
27 result of sadistic violence, from inflicting harm on another or
28 receiving such harm oneself.

29 (e)(d) "Sexual battery" means oral, anal, or vaginal
30 penetration by, or union with, the sexual organ of another or
31 the anal or vaginal penetration of another by any other object;
32 however, sexual battery does not include an act done for a bona
33 fide medical purpose.

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

37 (g)(f) "Sexual conduct" means actual or simulated sexual
38 intercourse, deviate sexual intercourse, sexual bestiality,
39 masturbation, or sadomasochistic abuse; actual lewd exhibition
40 of the genitals; actual physical contact with a person's clothed
41 or unclothed genitals, pubic area, buttocks, or, if the such



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

47 Section 3. Subsections (1), (4), and (5) of section
48 827.071, Florida Statutes, are amended to read:

49 827.071 Sexual performance by a child; penalties.—

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

52 (a) "Child pornography" means any visual depiction,
53 including, but not limited to, any photograph, film, video,
54 picture, computer or computer-generated image or picture, or
55 digitally created image or picture, whether made or produced by
56 electronic, mechanical, or other means, of sexual conduct, if
57 the production of such visual depiction involves the use of a
58 minor engaging in sexual conduct, or such visual depiction has
59 been created, adapted, or modified to appear that a minor is
60 engaging in sexual conduct. Proof of the identity of the minor
61 is not required in order to find a violation of this section.

62 (b) ~~(a)~~ "Deviate sexual intercourse" means sexual conduct
63 between persons not married to each other consisting of contact
64 between the penis and the anus, the mouth and the penis, or the
65 mouth and the vulva.

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



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71 (d) "Minor" has the same meaning as provided in s.
72 775.0847.

73 (e)~~(e)~~ "Performance" means any play, motion picture,
74 photograph, or dance or any other visual representation
75 exhibited before an audience.

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

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

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

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

93 (j)~~(h)~~ "Sexual conduct" means actual or simulated sexual
94 intercourse, deviate sexual intercourse, sexual bestiality,
95 masturbation, or sadomasochistic abuse; actual lewd exhibition
96 of the genitals; actual physical contact with a person's clothed
97 or unclothed genitals, pubic area, buttocks, or, if the ~~such~~
98 person is a female, breast, with the intent to arouse or gratify
99 the sexual desire of either party; or any act or conduct that



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100 ~~which~~ constitutes sexual battery or simulates that sexual
101 battery is being or will be committed. A mother's breastfeeding
102 of her baby does not under any circumstance constitute "sexual
103 conduct."

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

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

111 (4) It is unlawful for a ~~any~~ person to possess with the
112 intent to promote any child pornography or any other photograph,
113 motion picture, exhibition, show, representation, or other
114 presentation that ~~which~~, in whole or in part, includes any
115 sexual conduct by a child. The possession of three or more
116 copies of such photograph, motion picture, representation, or
117 presentation is prima facie evidence of an intent to promote.
118 Whoever violates this subsection commits ~~is guilty of~~ a felony
119 of the second degree, punishable as provided in s. 775.082, s.
120 775.083, or s. 775.084.

121 (5) (a) It is unlawful for a ~~any~~ person to knowingly
122 possess, control, or intentionally view child pornography or any
123 other a photograph, motion picture, exhibition, show,
124 representation, image, data, computer depiction, or other
125 presentation which, in whole or in part, he or she knows to
126 include any sexual conduct by a child. The possession, control,
127 or intentional viewing of each such photograph, motion picture,
128 exhibition, show, image, data, computer depiction,



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129 representation, or presentation is a separate offense. A person
130 who violates this subsection commits a felony of the third
131 degree, punishable as provided in s. 775.082, s. 775.083, or s.
132 775.084.

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

136 Section 4. Paragraph (e) of subsection (3) of section
137 921.0022, Florida Statutes, is amended to read:

138 921.0022 Criminal Punishment Code; offense severity ranking
139 chart.—

140 (3) OFFENSE SEVERITY RANKING CHART

141 (e) LEVEL 5

142

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



165 812.131 (2) (b) 3rd Robbery by sudden snatching.

166 812.16 (2) 3rd Owning, operating, or conducting a chop
shop.

167 817.034 (4) (a) 2. 2nd Communications fraud, value \$20,000 to
\$50,000.

168 817.234 (11) (b) 2nd Insurance fraud; property value \$20,000
or more but less than \$100,000.

169 817.2341 (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.

170 817.568 (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.

171 817.625 (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.

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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.

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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.

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

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



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or equipment.

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

181

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.

183

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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196 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
197 (4); or s. 847.0145; or of any similar offense under a former
198 designation, which offense the person committed when he or she
199 was 18 years of age or older, and the person:

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

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

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

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

211 (e) Has previously been convicted of a violation of s.
212 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
213 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
214 (4); s. 847.0145; of any offense under a former statutory
215 designation which is similar in elements to an offense described
216 in this paragraph; or of any offense that is a felony in another
217 jurisdiction, or would be a felony if that offense were
218 committed in this state, and which is similar in elements to an
219 offense described in this paragraph,

220
221 is a dangerous sexual felony offender, who must be sentenced to
222 a mandatory minimum term of 25 years imprisonment up to, and
223 including, life imprisonment.
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225 ===== T I T L E A M E N D M E N T =====

226 And the title is amended as follows:

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228 Delete lines 2 - 7

229 and insert:

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231 An act relating to child pornography; amending s.
232 847.012, F.S.; prohibiting an adult from knowingly
233 distributing to a minor or posting on school property
234 certain specified obscene materials; defining the term
235 "school property"; amending s. 775.0847, F.S.;
236 revising the definition of the term "child
237 pornography" to include visual depictions in which it
238 appears that a minor is engaging in sexual conduct;
239 providing that proof of the identity of a minor is not
240 required; defining the term "minor"; amending s.
241 827.071, F.S.; defining the terms "child pornography"
242 and "minor"; conforming cross-references; including
243 possession of child pornography within specified
244 offenses; providing penalties; amending s. 921.0022,
245 F.S.; conforming provisions of the offense severity
246 ranking chart of the Criminal Punishment Code to
247 changes made by the act; reenacting s. 794.0115(2),
248 F.S., relating to dangerous sexual felony offenders
249 and mandatory sentencing thereof, to incorporate the
250 amendment made by the act to s. 827.071, F.S., in a
251 reference thereto; providing an effective date.