

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Trujillo offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 1686 and 1687, insert:

5
6 Section 15. Paragraph (b) of subsection (1) of section
7 775.0847, Florida Statutes, is amended, a new paragraph (c) is
8 added to that subsection, and present paragraphs (c) through (f)
9 of that subsection are redesignated as paragraphs (d) through
10 (g), respectively, to read:

11 775.0847 Possession or promotion of certain images of
12 child pornography; reclassification.—

13 (1) For purposes of this section:

14 (b) "Child pornography" means any image depicting a minor
15 engaged in sexual conduct or such visual depiction that has been
16 created, adapted, or modified to appear that a minor is engaging

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17 in sexual conduct. Proof of the identity of the minor is not
18 required in order to find a violation of this section.

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

25 Section 16. New paragraphs (a) and (d) are added to
26 subsection (1) of section 827.071, Florida Statutes, present
27 paragraphs (a) through (j) of that subsection are redesignated
28 as paragraphs (b), (c), and (e) through (l) of that subsection,
29 respectively, and present paragraph (j) of subsection (1),
30 subsection (4), and paragraph (a) of subsection (5) of that
31 section are amended, to read:

32 827.071 Sexual performance by a child; penalties.—

33 (1) As used in this section, the following definitions
34 shall apply:

35 (a) "Child pornography" means any visual depiction,
36 including, but not limited to, any photograph, film, video,
37 picture, computer or computer-generated image or picture, or
38 digitally created image or picture, whether made or produced by
39 electronic, mechanical, or other means, of sexual conduct, where
40 the production of such visual depiction involves the use of a
41 minor engaging in sexual conduct, or such visual depiction has
42 been created, adapted, or modified to appear that a minor is
43 engaging in sexual conduct. Proof of the identity of the minor
44 is not required in order to find a violation of this section.

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45 (d) "Minor" has the same meaning as provided in s.
46 775.0847.

47 (1)-(j) "Simulated" means the explicit depiction of conduct
48 set forth in paragraph (j) ~~(h)~~ which creates the appearance of
49 such conduct and which exhibits any uncovered portion of the
50 breasts, genitals, or buttocks.

51 (4) It is unlawful for any person to possess with the
52 intent to promote any child pornography or any other photograph,
53 motion picture, exhibition, show, representation, or other
54 presentation which, in whole or in part, includes any sexual
55 conduct by a child. The possession of three or more copies of
56 such photograph, motion picture, representation, or presentation
57 is prima facie evidence of an intent to promote. Whoever
58 violates this subsection commits ~~is guilty of~~ a felony of the
59 second degree, punishable as provided in s. 775.082, s. 775.083,
60 or s. 775.084.

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

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72 Section 17. Paragraph (e) of subsection (3) of section
73 921.0022, Florida Statutes, is amended to read:

74 921.0022 Criminal Punishment Code; offense severity
75 ranking chart.—

76 (3) OFFENSE SEVERITY RANKING CHART

77 (e) LEVEL 5

78

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.
381.0041(11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.

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85	Amendment No. 440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
86	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
87	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
88	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
89	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
90	790.01(2)	3rd	Carrying a concealed firearm.
91	790.162	2nd	Threat to throw or discharge destructive device.
	790.163(1)	2nd	False report of deadly

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			explosive or weapon of mass destruction.
92			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
93			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
94			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
95			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
96			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
97			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
98			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and

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one or more specified acts.

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

100

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

101

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

102

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

103

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

104

817.2341 (1), 3rd Filing false financial
(2) (a) & statements, making false
(3) (a) entries of material fact or
false statements regarding
property values relating to the
solvency of an insuring entity.

105

817.568 (2) (b) 2nd Fraudulent use of personal
identification information;
value of benefit, services

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received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.

106

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

107

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

108

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.

109

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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111	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.
112	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
113	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
114	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
115	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
116	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver

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cocaine (or other s.
893.03(1) (a), (1) (b), (1) (d),
(2) (a), (2) (b), or (2) (c) 4.
drugs).

117

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.

118

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.

119

893.13(1) (e) 2. 2nd Sell, manufacture, or deliver
cannabis or other drug

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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.

120

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.

121

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).

122

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

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124 Section 18. For the purpose of incorporating the amendment
125 made by this act to section 827.071, Florida Statutes, in
126 references thereto, subsection (2) of section 794.0115, Florida
127 Statutes, is reenacted to read:

128 794.0115 Dangerous sexual felony offender; mandatory
129 sentencing.—

130 (2) Any person who is convicted of a violation of s.
131 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
132 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
133 (4); or s. 847.0145; or of any similar offense under a former
134 designation, which offense the person committed when he or she
135 was 18 years of age or older, and the person:

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

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

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

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

147 (e) Has previously been convicted of a violation of s.
148 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
149 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
150 (4); s. 847.0145; of any offense under a former statutory
151 designation which is similar in elements to an offense described
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152 in this paragraph; or of any offense that is a felony in another
153 jurisdiction, or would be a felony if that offense were
154 committed in this state, and which is similar in elements to an
155 offense described in this paragraph,

156
157 is a dangerous sexual felony offender, who must be sentenced to
158 a mandatory minimum term of 25 years imprisonment up to, and
159 including, life imprisonment.

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161

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163

164

T I T L E A M E N D M E N T

165

Between lines 84 and 85, insert:

166

amending s. 775.0847, F.S.; revising the definition of the term

167

"child pornography" to include visual depictions in which it

168

appears that a minor is engaging in sexual conduct; providing

169

that proof of the identity of a minor is not required; defining

170

the term "minor"; amending s. 827.071, F.S.; defining the terms

171

"child pornography" and "minor"; conforming cross-references;

172

including possession of child pornography within specified

173

offenses; providing penalties; amending s. 921.0022, F.S.;

174

conforming provisions of the offense severity ranking chart of

175

the Criminal Punishment Code to changes made by the act;

176

reenacting s. 794.0115(2), F.S., relating to dangerous sexual

177

felony offenders and mandatory sentencing thereof, to

178

incorporate the amendment to s. 827.071, F.S., in references

179

thereto;

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