

By the Committees on Children, Families, and Elder Affairs; and Criminal Justice; and Senators Benacquisto, Gaetz, Lynn, and Hays

586-03232-12

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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 a specified video voyeurism provision to register  
6 as a sexual offender if the victim of the violation  
7 was a minor; amending s. 827.071, F.S.; providing that  
8 if more than one child is involved in a violation of  
9 provisions prohibiting sexual performance by a child,  
10 a separate offense may be charged for each child;  
11 amending s. 943.0435, F.S.; requiring a person  
12 convicted of a video voyeurism violation to register  
13 as a sexual offender if the victim of the violation  
14 was a minor; amending ss. 944.606 and 944.607, F.S.;  
15 redefining the term "sexual offender"; amending s.  
16 810.145, F.S.; revising the definition of the term  
17 "place and time when a person has a reasonable  
18 expectation of privacy" to include the interior of a  
19 residential dwelling; increasing the classification of  
20 specified video voyeurism offenses involving minors;  
21 amending s. 921.0022, F.S.; ranking a violation of s.  
22 810.145(8)(b), F.S., above its default value for  
23 purposes of the offense severity ranking chart of the  
24 Criminal Punishment Code; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. This act may be cited as the "Protect Our  
29 Children Act."

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30 Section 2. Paragraph (a) of subsection (4) of section  
31 775.21, Florida Statutes, is amended to read:

32 775.21 The Florida Sexual Predators Act.—

33 (4) SEXUAL PREDATOR CRITERIA.—

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

39 1. The felony is:

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

45 b. Any felony violation, or any attempt thereof, of s.  
46 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a  
47 minor and the defendant is not the victim's parent or guardian;  
48 s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.  
49 796.035; s. 800.04; s. 810.145(8); s. 825.1025(2)(b); s.  
50 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a  
51 violation of a similar law of another jurisdiction, and the  
52 offender has previously been convicted of or found to have  
53 committed, or has pled nolo contendere or guilty to, regardless  
54 of adjudication, any violation of s. 787.01, s. 787.02, or s.  
55 787.025(2)(c), where the victim is a minor and the defendant is  
56 not the victim's parent or guardian; s. 794.011, excluding s.  
57 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.  
58 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,

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59 excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a  
60 violation of a similar law of another jurisdiction;

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

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

67 Section 3. Paragraph (a) of subsection (5) of section  
68 827.071, Florida Statutes, is amended to read:

69 827.071 Sexual performance by a child; penalties.—

70 (5) (a) It is unlawful for any person to knowingly possess,  
71 control, or intentionally view a photograph, motion picture,  
72 exhibition, show, representation, image, data, computer  
73 depiction, or other presentation which, in whole or in part, he  
74 or she knows to include any sexual conduct by a child. The  
75 possession, control, or intentional viewing of each such  
76 photograph, motion picture, exhibition, show, image, data,  
77 computer depiction, representation, or presentation is a  
78 separate offense. If a photograph, motion picture, exhibition,  
79 show, representation, image, data, computer depiction, or other  
80 presentation includes sexual conduct by more than one child, a  
81 separate offense may be charged for each such child in each such  
82 photograph, motion picture, exhibition, show, representation,  
83 image, data, computer depiction, or other presentation. A person  
84 who violates this subsection commits a felony of the third  
85 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
86 775.084.

87 Section 4. Paragraph (a) of subsection (1) of section

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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

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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

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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.

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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  
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 convicted  
174 of committing, or attempting, soliciting, or conspiring to

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175 commit, any of the criminal offenses proscribed in the following  
176 statutes in this state or similar offenses in another  
177 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
178 the victim is a minor and the defendant is not the victim's  
179 parent or guardian; s. 794.011, excluding s. 794.011(10); s.  
180 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8); s.  
181 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
182 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s.  
183 985.701(1); or any similar offense committed in this state which  
184 has been redesignated from a former statute number to one of  
185 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 conviction  
198 for committing, or attempting, soliciting, or conspiring to  
199 commit, any of the criminal offenses proscribed in the following  
200 statutes in this state or similar offenses in another  
201 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
202 the victim is a minor and the defendant is not the victim's  
203 parent or guardian; s. 794.011, excluding s. 794.011(10); s.

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204 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8); s.  
205 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
206 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s.  
207 985.701(1); or any similar offense committed in this state which  
208 has been redesignated from a former statute number to one of  
209 those listed in this paragraph; or

210 2. Who establishes or maintains a residence in this state and  
211 who has not been designated as a sexual predator by a court of  
212 this state but who has been designated as a sexual predator, as  
213 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. Paragraph (c) of subsection (1) and subsection  
221 (8) of section 810.145, Florida Statutes, are amended to read:

222 810.145 Video voyeurism.—

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

224 (c) "Place and time when a person has a reasonable  
225 expectation of privacy" means a place and time when a reasonable  
226 person would believe that he or she could fully disrobe in  
227 privacy, without being concerned that the person's undressing  
228 was being viewed, recorded, or broadcasted by another,  
229 including, but not limited to, the interior of a residential  
230 dwelling, bathroom, changing room, fitting room, dressing room,  
231 or tanning booth.

232 (8) (a) A person who is:



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233           1. Eighteen years of age or older who is responsible for  
234 the welfare of a child younger than 16 years of age, regardless  
235 of whether the person knows or has reason to know the age of the  
236 child, and who commits an offense under this section against  
237 that child;

238           2. Eighteen years of age or older who is employed at a  
239 private school as defined in s. 1002.01; a school as defined in  
240 s. 1003.01; or a voluntary prekindergarten education program as  
241 described in s. 1002.53(3)(a), (b), or (c) and who commits an  
242 offense under this section against a student of the private  
243 school, school, or voluntary prekindergarten education program;  
244 or

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

249  
250 commits a felony of the second ~~third~~ degree, punishable as  
251 provided in s. 775.082, s. 775.083, or s. 775.084.

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

256           Section 8. Paragraph (f) of subsection (3) of section  
257 921.0022, Florida Statutes, is amended to read:

258           921.0022 Criminal Punishment Code; offense severity ranking  
259 chart.—

260           (3) OFFENSE SEVERITY RANKING CHART

261           (f) LEVEL 6

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Florida Statute	Felony Degree	Description
262 316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
263 499.0051 (3)	2nd	Knowing forgery of pedigree papers.
264 499.0051 (4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
265 499.0051 (5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
266 775.0875 (1)	3rd	Taking firearm from law enforcement officer.
267 784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
268 784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
269 784.041	3rd	Felony battery; domestic battery by strangulation.
270 784.048 (3)	3rd	Aggravated stalking; credible threat.
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784.048 (5)	3rd	Aggravated stalking of person under 16.
784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081 (2)	2nd	Aggravated assault on specified official or employee.
784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083 (2)	2nd	Aggravated assault on code inspector.
787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.

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790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
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.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
<u>810.145(8)(b)</u>	<u>2nd</u>	<u>Video voyeurism; certain minor victims; 2nd or subsequent offense.</u>

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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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812.014(6) 2nd Theft; property stolen \$3,000 or more; coordination of others.

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812.015(9)(a) 2nd Retail theft; property stolen \$300 or more; second or subsequent conviction.

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812.015(9)(b) 2nd Retail theft; property stolen \$3,000 or more; coordination of others.

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812.13(2)(c) 2nd Robbery, no firearm or other weapon (strong-arm robbery).

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817.034(4)(a)1. 1st Communications fraud, value greater than \$50,000.

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817.4821(5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

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825.102(1) 3rd Abuse of an elderly person or disabled adult.

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825.102(3)(c) 3rd Neglect of an elderly person or disabled adult.

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825.1025(3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

301

825.103(2)(c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.

302

827.03(1) 3rd Abuse of a child.

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827.03(3)(c) 3rd Neglect of a child.

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827.071(2) & (3) 2nd Use or induce a child in a sexual performance, or promote or direct such performance.

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836.05 2nd Threats; extortion.

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836.10 2nd Written threats to kill or do bodily injury.

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843.12 3rd Aids or assists person to escape.

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847.011 3rd Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

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

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

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

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.

944.40 2nd Escapes.

944.46 3rd Harboring, concealing, aiding escaped prisoners.

944.47(1)(a)5. 2nd Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

951.22(1) 3rd Intoxicating drug, firearm, or weapon introduced into county facility.

Section 9. This act shall take effect October 1, 2012.