



770164

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
	.	
	.	
	.	

---

The Committee on Children, Families, and Elder Affairs  
(Grimsley) recommended the following:

**Senate Amendment to Amendment (287160) (with title amendment)**

Delete lines 5 - 40  
and insert:

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



770164

11           775.0847 Possession or promotion of certain images of child  
12 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  
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 he or she was a minor was used  
22 in creating, adapting, or modifying the visual depiction, and  
23 who is recognizable as an actual person by his or her facial  
24 features, likeness, or other distinguishing characteristics.

25           Section 2. Present paragraphs (a), (b), and (c) through (j)  
26 of subsection (1) of section 827.071, Florida Statutes, are  
27 redesignated as paragraphs (b), (c), and (e) through (l),  
28 respectively, present paragraph (j) of that subsection is  
29 amended, new paragraphs (a) and (d) are added to that  
30 subsection, and subsection (4) and paragraph (a) of subsection  
31 (5) of that 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 a visual depiction,  
36 including, but not limited to, a 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, if



770164

40 the production of such visual depiction involves the use of a  
41 minor engaging in sexual conduct, or if such visual depiction  
42 has 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.

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



770164

69 separate offense. If such photograph, motion picture,  
70 exhibition, show, representation, image, data, computer  
71 depiction, or other presentation includes sexual conduct by more  
72 than one child, then each such child in each such photograph,  
73 motion picture, exhibition, show, representation, image, data,  
74 computer depiction, or other presentation that is knowingly  
75 possessed, controlled, or intentionally viewed is a separate  
76 offense. A person who violates this paragraph ~~subsection~~ commits  
77 a felony of the third degree, punishable as provided in s.  
78 775.082, s. 775.083, or s. 775.084.

79 Section 3. Paragraph (e) of subsection (3) of section  
80 921.0022, Florida Statutes, is amended to read:

81 921.0022 Criminal Punishment Code; offense severity ranking  
82 chart.—

83 (3) OFFENSE SEVERITY RANKING CHART

84 (e) LEVEL 5

85

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

86

87

88



770164

89			bodily injury.
	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
90			
	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
91			
	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
92			
	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
93			
	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
94			
	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
95			
	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers'





770164

105	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
106	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
107	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
108	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
109	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
110	812.131 (2) (b)	3rd	Robbery by sudden snatching.
111	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
112	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than



770164

\$100,000.

113

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

114

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.

115

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

116

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

117

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.

118

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.

119

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.

120

843.01

3rd

Resist officer with violence to person; resist arrest with violence.

121

847.0135 (5) (b)

2nd

Lewd or lascivious exhibition using computer; offender 18 years or older.

122

847.0137  
(2) & (3)

3rd

Transmission of pornography by electronic device or equipment.

123

847.0138

3rd

Transmission of material



770164

124	(2) & (3)		harmful to minors to a minor by electronic device or equipment.
	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
125			
	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 to join a criminal gang.
126			
	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).
127			
	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



770164

community center.

128

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.

129

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., (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.

130

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.

131

893.13(4)(b) 2nd Deliver to minor cannabis (or other s. 893.03(1)(c),



770164

(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).

132

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

133

134             Section 4. Subsection (13) is added to section 947.1405,  
135 Florida Statutes, to read:

136             947.1405 Conditional release program.—

137             (13) Effective for a releasee whose crime was committed on  
138 or after October 1, 2014, in violation of chapter 794, s.  
139 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition  
140 to any other provision of this section, the commission must  
141 impose a condition prohibiting the releasee from viewing,  
142 accessing, owning, or possessing any obscene, pornographic, or  
143 sexually stimulating visual or auditory material unless  
144 otherwise indicated in the treatment plan provided by a  
145 qualified practitioner in the sexual offender treatment program.  
146 Visual or auditory material includes, but is not limited to,  
147 telephones, electronic media, computer programs, and computer  
148 services.

149             Section 5. Subsection (5) is added to section 948.30,  
150 Florida Statutes, to read:

151             948.30 Additional terms and conditions of probation or  
152 community control for certain sex offenses.—Conditions imposed  
153 pursuant to this section do not require oral pronouncement at



770164

154 the time of sentencing and shall be considered standard  
155 conditions of probation or community control for offenders  
156 specified in this section.

157 (5) Effective for a probationer or community controllee  
158 whose crime was committed on or after October 1, 2014, and who  
159 is placed on probation or community control for a violation of  
160 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.  
161 847.0145, in addition to all other conditions imposed, the court  
162 must impose a condition prohibiting the probationer or community  
163 controllee from viewing, accessing, owning, or possessing any  
164 obscene, pornographic, or sexually stimulating visual or  
165 auditory material unless otherwise indicated in the treatment  
166 plan provided by a qualified practitioner in the sexual offender  
167 treatment program. Visual or auditory material includes, but is  
168 not limited to, telephones, electronic media, computer programs,  
169 and computer services.

170 Section 6. For the purpose of incorporating the amendment  
171 made by this act to section 827.071, Florida Statutes, in  
172 references thereto, subsection (2) of section 794.0115, Florida  
173 Statutes, is reenacted to read:

174 794.0115 Dangerous sexual felony offender; mandatory  
175 sentencing.—

176 (2) Any person who is convicted of a violation of s.  
177 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.  
178 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or  
179 (4); or s. 847.0145; or of any similar offense under a former  
180 designation, which offense the person committed when he or she  
181 was 18 years of age or older, and the person:

182 (a) Caused serious personal injury to the victim as a



770164

183 result of the commission of the offense;

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

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

188 (d) Committed the offense while under the jurisdiction of a  
189 court for a felony offense under the laws of this state, for an  
190 offense that is a felony in another jurisdiction, or for an  
191 offense that would be a felony if that offense were committed in  
192 this state; or

193 (e) Has previously been convicted of a violation of s.  
194 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.  
195 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or  
196 (4); s. 847.0145; of any offense under a former statutory  
197 designation which is similar in elements to an offense described  
198 in this paragraph; or of any offense that is a felony in another  
199 jurisdiction, or would be a felony if that offense were  
200 committed in this state, and which is similar in elements to an  
201 offense described in this paragraph,

202  
203 is a dangerous sexual felony offender, who must be sentenced to  
204 a mandatory minimum term of 25 years imprisonment up to, and  
205 including, life imprisonment.

206  
207 ===== T I T L E A M E N D M E N T =====

208 And the title is amended as follows:

209 Delete lines 48 - 53

210 and insert:

211 An act relating to child pornography; amending s.



770164

212 775.0847, F.S.; redefining the term "child  
213 pornography" and defining the term "minor"; amending  
214 s. 827.071, F.S.; defining the terms "child  
215 pornography" and "minor"; conforming cross-references;  
216 including possession of child pornography within  
217 specified criminal offenses; providing criminal  
218 penalties; amending s. 921.0022, F.S.; revising  
219 provisions of the offense severity ranking chart of  
220 the Criminal Punishment Code to conform to changes  
221 made by the act; amending ss. 947.1405 and 948.30,  
222 F.S.; prohibiting certain conditional releasees,  
223 probationers, or community controllees from viewing,  
224 accessing, owning, or possessing any obscene,  
225 pornographic, or sexually stimulating material;  
226 providing an exception; reenacting s. 794.0115(2),  
227 F.S., relating to dangerous sexual felony offenders  
228 and mandatory sentencing thereof, to incorporate the  
229 amendment to s. 827.071, F.S., in references thereto;