

By the Committee on Children, Families, and Elder Affairs; and
Senator Stargel

586-01755-14

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1 A bill to be entitled
2 An act relating to child pornography; amending s.
3 775.0847, F.S.; redefining the term "child
4 pornography" and defining the term "minor"; amending
5 s. 827.071, F.S.; defining the terms "child
6 pornography" and "minor"; conforming cross-references;
7 including possession of child pornography within
8 specified criminal offenses; providing criminal
9 penalties; amending s. 921.0022, F.S.; revising
10 provisions of the offense severity ranking chart of
11 the Criminal Punishment Code to conform to changes
12 made by the act; amending ss. 947.1405 and 948.30,
13 F.S.; prohibiting certain conditional releasees,
14 probationers, or community controllees from viewing,
15 accessing, owning, or possessing any obscene,
16 pornographic, or sexually stimulating material;
17 providing an exception; reenacting s. 794.0115(2),
18 F.S., relating to dangerous sexual felony offenders
19 and mandatory sentencing thereof, to incorporate the
20 amendment to s. 827.071, F.S., in references thereto;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (b) of subsection (1) of section
26 775.0847, Florida Statutes, is amended, present paragraphs (c)
27 through (f) of that subsection are redesignated as paragraphs
28 (d) through (g), respectively, and a new paragraph (c) is added
29 to that subsection, to read:

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30 775.0847 Possession or promotion of certain images of child
31 pornography; reclassification.—

32 (1) For purposes of this section:

33 (b) "Child pornography" means any image depicting a minor
34 engaged in sexual conduct or such visual depiction that has been
35 created, adapted, or modified to appear that a minor is engaging
36 in sexual conduct. Proof of the identity of the minor is not
37 required in order to find a violation of this section.

38 (c) "Minor" means a person who had not attained the age of
39 18 years at the time the visual depiction was created, adapted,
40 or modified, or whose image while he or she was a minor was used
41 in creating, adapting, or modifying the visual depiction, and
42 who is recognizable as an actual person by his or her facial
43 features, likeness, or other distinguishing characteristics.

44 Section 2. Present paragraphs (a), (b), and (c) through (j)
45 of subsection (1) of section 827.071, Florida Statutes, are
46 redesignated as paragraphs (b), (c), and (e) through (l),
47 respectively, present paragraph (j) of that subsection is
48 amended, new paragraphs (a) and (d) are added to that
49 subsection, and subsection (4) and paragraph (a) of subsection
50 (5) of that section are amended, to read:

51 827.071 Sexual performance by a child; penalties.—

52 (1) As used in this section, the following definitions
53 shall apply:

54 (a) "Child pornography" means a visual depiction,
55 including, but not limited to, a photograph, film, video,
56 picture, computer or computer-generated image or picture, or
57 digitally created image or picture, whether made or produced by
58 electronic, mechanical, or other means, of sexual conduct, if

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59 the production of such visual depiction involves the use of a
60 minor engaging in sexual conduct, or if such visual depiction
61 has been created, adapted, or modified to appear that a minor is
62 engaging in sexual conduct. Proof of the identity of the minor
63 is not required in order to find a violation of this section.

64 (d) "Minor" has the same meaning as provided in s.
65 775.0847.

66 (1)~~(j)~~ "Simulated" means the explicit depiction of conduct
67 set forth in paragraph (j) ~~(h)~~ which creates the appearance of
68 such conduct and which exhibits any uncovered portion of the
69 breasts, genitals, or buttocks.

70 (4) It is unlawful for any person to possess with the
71 intent to promote any child pornography or any other photograph,
72 motion picture, exhibition, show, representation, or other
73 presentation which, in whole or in part, includes any sexual
74 conduct by a child. The possession of three or more copies of
75 such photograph, motion picture, representation, or presentation
76 is prima facie evidence of an intent to promote. Whoever
77 violates this subsection commits ~~is guilty of~~ a felony of the
78 second degree, punishable as provided in s. 775.082, s. 775.083,
79 or s. 775.084.

80 (5) (a) It is unlawful for any person to knowingly possess,
81 control, or intentionally view child pornography or any other a
82 photograph, motion picture, exhibition, show, representation,
83 image, data, computer depiction, or other presentation which, in
84 whole or in part, he or she knows to include any sexual conduct
85 by a child. The possession, control, or intentional viewing of
86 each such photograph, motion picture, exhibition, show, image,
87 data, computer depiction, representation, or presentation is a

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88 separate offense. If such photograph, motion picture,
 89 exhibition, show, representation, image, data, computer
 90 depiction, or other presentation includes sexual conduct by more
 91 than one child, then each such child in each such photograph,
 92 motion picture, exhibition, show, representation, image, data,
 93 computer depiction, or other presentation that is knowingly
 94 possessed, controlled, or intentionally viewed is a separate
 95 offense. A person who violates this paragraph ~~subsection~~ commits
 96 a felony of the third degree, punishable as provided in s.
 97 775.082, s. 775.083, or s. 775.084.

98 Section 3. Paragraph (e) of subsection (3) of section
 99 921.0022, Florida Statutes, is amended to read:

100 921.0022 Criminal Punishment Code; offense severity ranking
 101 chart.—

102 (3) OFFENSE SEVERITY RANKING CHART

103 (e) LEVEL 5

104

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

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bodily injury.

108

327.30 (5) 3rd Vessel accidents involving personal injury; leaving scene.

109

379.367 (4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

110

379.3671 (2) (c) 3. 3rd Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.

111

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

112

440.10 (1) (g) 2nd Failure to obtain workers' compensation coverage.

113

440.105 (5) 2nd Unlawful solicitation for the purpose of making workers' compensation claims.

114

440.381 (2) 2nd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers'

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compensation premiums.

115

624.401 (4) (b) 2. 2nd Transacting insurance without a
 certificate or authority;
 premium collected \$20,000 or
 more but less than \$100,000.

116

626.902 (1) (c) 2nd Representing an unauthorized
 insurer; repeat offender.

117

790.01 (2) 3rd Carrying a concealed firearm.

118

790.162 2nd Threat to throw or discharge
 destructive device.

119

790.163 (1) 2nd False report of deadly
 explosive or weapon of mass
 destruction.

120

790.221 (1) 2nd Possession of short-barreled
 shotgun or machine gun.

121

790.23 2nd Felons in possession of
 firearms, ammunition, or
 electronic weapons or devices.

122

800.04 (6) (c) 3rd Lewd or lascivious conduct;
 offender less than 18 years.

123

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124	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
125	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
126	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
127	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
128	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
129	812.131 (2) (b)	3rd	Robbery by sudden snatching.
130	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
131	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

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\$100,000.

132

817.2341(1),
(2) (a) & (3) (a)

3rd

Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

133

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.

134

817.625(2) (b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

135

825.1025(4)

3rd

Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

136

827.071(4)

2nd

Possess with intent to promote any child pornography or other

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photographic material, motion picture, etc., which includes sexual conduct by a child.

137

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.

138

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.

139

843.01

3rd

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

140

847.0135 (5) (b)

2nd

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

141

847.0137
(2) & (3)

3rd

Transmission of pornography by electronic device or equipment.

142

847.0138

3rd

Transmission of material

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(2) & (3)

harmful to minors to a minor by
electronic device or equipment.

143

874.05(1)(b)

2nd

Encouraging or recruiting
another to join a criminal
gang; second or subsequent
offense.

144

874.05(2)(a)

2nd

Encouraging or recruiting
person under 13 to join a
criminal gang.

145

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).

146

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

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community center.

147

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.

148

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.

149

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.

150

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

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(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).

151

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

152

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

155 947.1405 Conditional release program.—

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

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

170 948.30 Additional terms and conditions of probation or
 171 community control for certain sex offenses.—Conditions imposed
 172 pursuant to this section do not require oral pronouncement at

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173 the time of sentencing and shall be considered standard
174 conditions of probation or community control for offenders
175 specified in this section.

176 (5) Effective for a probationer or community controllee
177 whose crime was committed on or after October 1, 2014, and who
178 is placed on probation or community control for a violation of
179 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.
180 847.0145, in addition to all other conditions imposed, the court
181 must impose a condition prohibiting the probationer or community
182 controllee from viewing, accessing, owning, or possessing any
183 obscene, pornographic, or sexually stimulating visual or
184 auditory material unless otherwise indicated in the treatment
185 plan provided by a qualified practitioner in the sexual offender
186 treatment program. Visual or auditory material includes, but is
187 not limited to, telephones, electronic media, computer programs,
188 and computer services.

189 Section 6. For the purpose of incorporating the amendment
190 made by this act to section 827.071, Florida Statutes, in
191 references thereto, subsection (2) of section 794.0115, Florida
192 Statutes, is reenacted to read:

193 794.0115 Dangerous sexual felony offender; mandatory
194 sentencing.—

195 (2) Any person who is convicted of a violation of s.
196 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
197 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
198 (4); or s. 847.0145; or of any similar offense under a former
199 designation, which offense the person committed when he or she
200 was 18 years of age or older, and the person:

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

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202 result of the commission of the offense;

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

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

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

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

221
222 is a dangerous sexual felony offender, who must be sentenced to
223 a mandatory minimum term of 25 years imprisonment up to, and
224 including, life imprisonment.

225 Section 7. This act shall take effect October 1, 2014.