

1 A bill to be entitled
2 An act relating to sexually explicit material;
3 amending s. 775.0847, F.S.; revising definitions;
4 defining the term "identifiable minor"; revising the
5 list of circumstances under which specified offenses
6 may be reclassified; amending s. 784.049, F.S.;
7 increasing the monetary damages an aggrieved person
8 may receive as a result of sexual cyberharassment;
9 amending s. 827.071, F.S.; revising and providing
10 definitions; conforming provisions to changes made by
11 the act; creating s. 836.13, F.S.; providing
12 definitions; prohibiting the willful and malicious
13 promotion of altered sexual depictions without
14 consent; providing criminal penalties; providing a
15 civil cause of action; providing applicability;
16 providing construction; creating s. 836.14, F.S.;
17 providing definitions; prohibiting the theft of a
18 sexually explicit image; prohibiting the willful
19 possession or promotion of a stolen sexually explicit
20 image with specified intent; providing criminal
21 penalties; providing a civil cause of action;
22 providing applicability; providing construction;
23 amending s. 847.001, F.S.; revising definitions;
24 defining the terms "identifiable minor" and "promote";
25 amending s. 847.011, F.S.; increasing a penalty

26 relating to child-like sex dolls; amending s.
 27 847.0137, F.S.; deleting the definition of the term
 28 "minor"; redefining the term "transmit"; amending s.
 29 921.0022, F.S.; ranking offenses created by this act
 30 on the Criminal Punishment Code offense severity
 31 ranking chart; conforming provisions to changes made
 32 by the act; amending ss. 288.1254 and 847.0141, F.S.;
 33 conforming cross-references; providing an effective
 34 date.

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. Section 775.0847, Florida Statutes, is amended
 39 to read:

40 775.0847 Possession or promotion of certain images of
 41 child pornography; reclassification.—

42 (1) For purposes of this section:

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

45 (b) "Child pornography" means:

46 1. Any image depicting a minor engaged in sexual conduct;

47 or

48 2. Any image that has been created, altered, adapted, or
 49 modified by electronic, mechanical, or other means, to portray
 50 an identifiable minor engaged in sexual conduct.

51 (c) "Identifiable minor" means a person:
 52 1. Who was a minor at the time the image was created,
 53 altered, adapted, or modified, or whose image as a minor was
 54 used in the creation, alteration, adaptation, or modification of
 55 the image; and
 56 2. Who is recognizable as an actual person by the person's
 57 face, likeness, or other distinguishing characteristic, such as
 58 a unique birthmark, or other recognizable feature.

59
 60 The term may not be construed to require proof of the actual
 61 identity of the identifiable minor.

62 (d)-(e) "Sadomasochistic abuse" means flagellation or
 63 torture by or upon a person or the condition of being fettered,
 64 bound, or otherwise physically restrained, for the purpose of
 65 deriving sexual satisfaction, or satisfaction brought about as a
 66 result of sadistic violence, from inflicting harm on another or
 67 receiving such harm oneself.

68 (e)-(d) "Sexual battery" means oral, anal, or vaginal
 69 penetration by, or union with, the sexual organ of another or
 70 the anal or vaginal penetration of another by any other object;
 71 however, sexual battery does not include an act done for a bona
 72 fide medical purpose.

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

76 (g)~~(f)~~ "Sexual conduct" means actual or simulated sexual
77 intercourse, deviate sexual intercourse, sexual bestiality,
78 masturbation, or sadomasochistic abuse; actual or simulated lewd
79 exhibition of the genitals; actual physical contact with a
80 person's clothed or unclothed genitals, pubic area, buttocks,
81 or, if such person is a female, breast with the intent to arouse
82 or gratify the sexual desire of either party; or any act or
83 conduct which constitutes sexual battery or simulates that
84 sexual battery is being or will be committed. A mother's
85 breastfeeding of her baby does not under any circumstance
86 constitute "sexual conduct."

87 (2) A violation of s. 827.071, s. 847.0135, s. 847.0137,
88 or s. 847.0138 shall be reclassified to the next higher degree
89 as provided in subsection (3) if:

90 (a) The offender possesses 10 or more images of any form
91 of child pornography regardless of content; and

92 (b) The content of at least one image contains one or more
93 of the following:

94 1. A child who is younger than the age of 5.

95 2. Sadomasochistic abuse involving a child.

96 3. Sexual battery involving a child.

97 4. Sexual bestiality involving a child.

98 5. Any motion picture, film, video, or computer-generated
99 motion picture, film, or video ~~movie~~ involving a child,
100 regardless of length and regardless of whether the motion

101 picture, film, video, or computer-generated motion picture,
 102 film, or video ~~movie~~ contains sound.

103 (3)(a) In the case of a felony of the third degree, the
 104 offense is reclassified to a felony of the second degree.

105 (b) In the case of a felony of the second degree, the
 106 offense is reclassified to a felony of the first degree.

107
 108 For purposes of sentencing under chapter 921 and determining
 109 incentive gain-time eligibility under chapter 944, a felony
 110 offense that is reclassified under this section is ranked one
 111 level above the ranking under s. 921.0022 or s. 921.0023 of the
 112 offense committed.

113 Section 2. Paragraph (b) of subsection (5) of section
 114 784.049, Florida Statutes, is amended to read:

115 784.049 Sexual cyberharassment.—

116 (5) An aggrieved person may initiate a civil action
 117 against a person who violates this section to obtain all
 118 appropriate relief in order to prevent or remedy a violation of
 119 this section, including the following:

120 (b) Monetary damages to include \$10,000 ~~\$5,000~~ or actual
 121 damages incurred as a result of a violation of this section,
 122 whichever is greater.

123 Section 3. Section 827.071, Florida Statutes, is amended
 124 to read:

125 827.071 Sexual performance by a child; child pornography;

126 penalties.—

127 (1) As used in this section, the following definitions
128 shall apply:

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

131 (b) "Child pornography" means:

132 1. Any image depicting a minor engaged in sexual conduct;

133 or

134 2. Any image that has been created, altered, adapted, or
135 modified by electronic, mechanical, or other means, to portray
136 an identifiable minor engaged in sexual conduct.

137 (c)-(a) "Deviate sexual intercourse" means sexual conduct
138 between persons not married to each other consisting of contact
139 between the penis and the anus, the mouth and the penis, or the
140 mouth and the vulva.

141 (d) "Identifiable minor" means a person:

142 1. Who was a minor at the time the image was created,
143 altered, adapted, or modified, or whose image as a minor was
144 used in the creation, alteration, adaptation, or modification of
145 the image; and

146 2. Who is recognizable as an actual person by the person's
147 face, likeness, or other distinguishing characteristic, such as
148 a unique birthmark, or other recognizable feature.

149
150 The term may not be construed to require proof of the actual

151 identity of the identifiable minor.

152 (e)~~(b)~~ "Intentionally view" means to deliberately,
153 purposefully, and voluntarily view. Proof of intentional viewing
154 requires establishing more than a single image, motion picture,
155 exhibition, show, ~~image~~, data, computer depiction,
156 representation, or other presentation over any period of time.

157 (f)~~(e)~~ "Performance" means any play, motion picture,
158 photograph, or dance or any other visual representation
159 exhibited before an audience.

160 (g)~~(d)~~ "Promote" means to procure, manufacture, issue,
161 sell, give, provide, lend, mail, deliver, transfer, transmit,
162 transmute, publish, distribute, circulate, disseminate, present,
163 exhibit, send, post, share, or advertise or to offer or agree to
164 do the same.

165 (h)~~(e)~~ "Sadomasochistic abuse" means flagellation or
166 torture by or upon a person, or the condition of being fettered,
167 bound, or otherwise physically restrained, for the purpose of
168 deriving sexual satisfaction from inflicting harm on another or
169 receiving such harm oneself.

170 (i)~~(f)~~ "Sexual battery" means oral, anal, or vaginal
171 penetration by, or union with, the sexual organ of another or
172 the anal or vaginal penetration of another by any other object;
173 however, "sexual battery" does not include an act done for a
174 bona fide medical purpose.

175 (j)~~(g)~~ "Sexual bestiality" means any sexual act between a

176 person and an animal involving the sex organ of the one and the
177 mouth, anus, or vagina of the other.

178 (k)~~(h)~~ "Sexual conduct" means actual or simulated sexual
179 intercourse, deviate sexual intercourse, sexual bestiality,
180 masturbation, or sadomasochistic abuse; actual or simulated lewd
181 exhibition of the genitals; actual physical contact with a
182 person's clothed or unclothed genitals, pubic area, buttocks,
183 or, if such person is a female, breast, with the intent to
184 arouse or gratify the sexual desire of either party; or any act
185 or conduct which constitutes sexual battery or simulates that
186 sexual battery is being or will be committed. A mother's
187 breastfeeding of her baby does not under any circumstance
188 constitute "sexual conduct."

189 (l)~~(i)~~ "Sexual performance" means any performance or part
190 thereof which includes sexual conduct by a child ~~of less than 18~~
191 ~~years of age.~~

192 (m)~~(j)~~ "Simulated" means the explicit depiction of conduct
193 set forth in paragraph (k) ~~(h)~~ which creates the appearance of
194 such conduct and which exhibits any uncovered portion of the
195 breasts, genitals, or buttocks.

196 (2) A person is guilty of the use of a child in a sexual
197 performance if, knowing the character and content thereof, he or
198 she employs, authorizes, or induces a child ~~less than 18 years~~
199 ~~of age~~ to engage in a sexual performance or, being a parent,
200 legal guardian, or custodian of such child, consents to the

201 participation by such child in a sexual performance. A person
 202 who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a
 203 felony of the second degree, punishable as provided in s.
 204 775.082, s. 775.083, or s. 775.084.

205 (3) A person is guilty of promoting a sexual performance
 206 by a child when, knowing the character and content thereof, he
 207 or she produces, directs, or promotes any performance which
 208 includes sexual conduct by a child ~~less than 18 years of age~~. A
 209 person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~
 210 a felony of the second degree, punishable as provided in s.
 211 775.082, s. 775.083, or s. 775.084.

212 (4) It is unlawful for any person to possess with the
 213 intent to promote any photograph, motion picture, exhibition,
 214 show, representation, or other presentation which, in whole or
 215 in part, includes child pornography ~~any sexual conduct by a~~
 216 ~~child~~. The possession of three or more copies of such
 217 photograph, motion picture, representation, or presentation is
 218 prima facie evidence of an intent to promote. A person who
 219 ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony
 220 of the second degree, punishable as provided in s. 775.082, s.
 221 775.083, or s. 775.084.

222 (5)(a) It is unlawful for any person to knowingly possess,
 223 control, or intentionally view a photograph, motion picture,
 224 exhibition, show, representation, image, data, computer
 225 depiction, or other presentation which, in whole or in part, he

226 or she knows to include child pornography ~~any sexual conduct by~~
 227 ~~a child~~. The possession, control, or intentional viewing of each
 228 such photograph, motion picture, exhibition, show, image, data,
 229 computer depiction, representation, or presentation is a
 230 separate offense. If such photograph, motion picture,
 231 exhibition, show, representation, image, data, computer
 232 depiction, or other presentation includes child pornography
 233 depicting ~~sexual conduct by~~ more than one child, then each such
 234 child in each such photograph, motion picture, exhibition, show,
 235 representation, image, data, computer depiction, or other
 236 presentation that is knowingly possessed, controlled, or
 237 intentionally viewed is a separate offense. A person who
 238 violates this paragraph ~~subsection~~ commits a felony of the third
 239 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 240 775.084.

241 (b) Paragraph (a) ~~This subsection~~ does not apply to any
 242 material possessed, controlled, or intentionally viewed as part
 243 of a law enforcement investigation.

244 (6) Prosecution of a ~~any~~ person for an offense under this
 245 section does ~~shall~~ not prohibit prosecution of that person in
 246 this state for a violation of any other law of this state,
 247 including a law providing for greater penalties than prescribed
 248 in this section or any other crime punishing the sexual
 249 performance or the sexual exploitation of children.

250 Section 4. Section 836.13, Florida Statutes, is created to

251 read:

252 836.13 Promotion of an altered sexual depiction;
253 prohibited acts; penalties; applicability.-

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

255 (a) "Altered sexual depiction" means any visual depiction
256 that, as a result of any type of digital, electronic,
257 mechanical, or other modification, alteration, or adaptation,
258 depicts a realistic version of an identifiable person:

259 1. With the nude body parts of another person as the nude
260 body parts of the identifiable person;

261 2. With computer-generated nude body parts as the nude
262 body parts of the identifiable person; or

263 3. Engaging in sexual conduct as defined in s. 847.001 in
264 which the identifiable person did not engage.

265 (b) "Identifiable person" means a person who is
266 recognizable as an actual person by the person's face, likeness,
267 or other distinguishing characteristic, such as a unique
268 birthmark, or other recognizable feature.

269 (c) "Nude body parts" means the human male or female
270 genitals, pubic area, or buttocks with less than a fully opaque
271 covering; or the female breast with less than a fully opaque
272 covering of any portion thereof below the top of the nipple; or
273 the depiction of covered male genitals in a discernibly turgid
274 state. The term does not under any circumstances include a
275 mother breastfeeding her baby.

276 (d) "Promote" means to issue, sell, give, provide, lend,
277 mail, deliver, transfer, transmit, transmute, publish,
278 distribute, circulate, disseminate, present, exhibit, send,
279 post, share, or advertise or to offer or agree to do the same.

280 (e) "Visual depiction" includes, but is not limited to, a
281 photograph, picture, image, motion picture, film, video, or
282 other visual representation.

283 (2) A person who willfully and maliciously promotes an
284 altered sexual depiction of an identifiable person, without the
285 consent of the identifiable person, and who knows or reasonably
286 should have known that such visual depiction was an altered
287 sexual depiction, commits a felony of the third degree,
288 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

289 (3) Every act, thing, or transaction prohibited by this
290 section constitutes a separate offense and is punishable as
291 such.

292 (4) The presence of a disclaimer within an altered sexual
293 depiction which notifies a viewer that the person or persons
294 depicted did not consent to or participate in the creation or
295 promotion of the material, or that the person or persons
296 depicted did not actually perform the actions portrayed, is not
297 a defense and does not relieve a person of criminal liability
298 under this section.

299 (5) An aggrieved person may initiate a civil action
300 against a person who violates subsection (2) to obtain

301 appropriate relief in order to prevent or remedy a violation of
 302 subsection (2), including all of the following:

303 (a) Injunctive relief.

304 (b) Monetary damages to include \$10,000 or actual damages
 305 incurred as a result of a violation of subsection (2), whichever
 306 is greater.

307 (c) Reasonable attorney fees and costs.

308 (6) The criminal and civil penalties of this section do
 309 not apply to:

310 (a) A provider of an interactive computer service as
 311 defined in 47 U.S.C. s. 230(f), an information service as
 312 defined in 47 U.S.C. s. 153, or a communications service as
 313 defined in s. 202.11, which provides the transmission, storage,
 314 or caching of:

315 1. Electronic communications or messages of others;

316 2. Another related telecommunications or commercial mobile
 317 radio service; or

318 3. Content provided by another person;

319 (b) A law enforcement officer, as defined in s. 943.10(1),
 320 or any local, state, federal, or military law enforcement agency
 321 that promotes an altered sexual depiction in connection with the
 322 performance of his or her duties as a law enforcement officer or
 323 the duties of the law enforcement agency;

324 (c) A person reporting unlawful activity; or

325 (d) A person participating in a hearing, trial, or other

326 legal proceeding.

327 (7) A violation of this section is committed within this
 328 state if any conduct that is an element of the offense, or any
 329 harm to the depicted person resulting from the offense, occurs
 330 within this state.

331 (8) Prosecution of a person for an offense under this
 332 section does not prohibit prosecution of that person in this
 333 state for a violation of any other law of this state, including
 334 a law providing for greater penalties than prescribed in this
 335 section or any other crime related to child pornography or the
 336 sexual performance or the sexual exploitation of children.

337 Section 5. Section 836.14, Florida Statutes, is created to
 338 read:

339 836.14 Theft or unauthorized possession or promotion of a
 340 sexually explicit image.-

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

342 (a) "Identifiable person" has the same meaning as in s.
 343 836.13.

344 (b) "Promote" has the same meaning as in s. 836.13.

345 (c) "Sexually explicit image" means any image depicting an
 346 identifiable person portraying nudity as defined in s. 847.001
 347 or an identifiable person engaging in sexual conduct as defined
 348 in s. 847.001.

349 (2) A person who commits theft, in violation of s.
 350 812.014, of a sexually explicit image commits a felony of the

351 third degree, punishable as provided in s. 775.082, s. 775.083,
 352 or s. 775.084.

353 (3) A person who willfully possesses with the intent to
 354 promote a sexually explicit image for the purpose of pecuniary
 355 or any other financial gain, when he or she knows or should have
 356 known the image was obtained in violation of subsection (2),
 357 commits a felony of the third degree, punishable as provided in
 358 s. 775.082, s. 775.083, or s. 775.084.

359 (4) A person who willfully promotes a sexually explicit
 360 image for the purpose of pecuniary or any other financial gain,
 361 when he or she knows or should have known the image was obtained
 362 in violation of subsection (2), commits a felony of the second
 363 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 364 775.084.

365 (5) Every act, thing, or transaction prohibited by this
 366 section constitutes a separate offense and is punishable as
 367 such.

368 (6) An aggrieved person may initiate a civil action
 369 against a person who violates this section to obtain all
 370 appropriate relief in order to prevent or remedy a violation of
 371 this section, including the following:

372 (a) Injunctive relief.

373 (b) Monetary damages to include \$10,000 or actual damages
 374 incurred as a result of a violation of this section, whichever
 375 is greater.

376 (c) Reasonable attorney fees and costs.
 377 (7) The criminal and civil penalties of this section do
 378 not apply to:
 379 (a) A provider of an interactive computer service as
 380 defined in 47 U.S.C. s. 230(f), an information service as
 381 defined in 47 U.S.C. s. 153, or a communications service as
 382 defined in s. 202.11, which provides the transmission, storage,
 383 or caching of:
 384 1. Electronic communications or messages of others;
 385 2. Another related telecommunications or commercial mobile
 386 radio service; or
 387 3. Content provided by another person;
 388 (b) A law enforcement officer, as defined in s. 943.10(1),
 389 or any local, state, federal, or military law enforcement agency
 390 that promotes a sexually explicit image in connection with the
 391 performance of his or her duties as a law enforcement officer or
 392 the duties of the law enforcement agency;
 393 (c) A person reporting unlawful activity;
 394 (d) A person participating in a hearing, trial, or other
 395 legal proceeding;
 396 (e) Sexually explicit images that resulted from the
 397 voluntary exposure of the person depicted in a public or
 398 commercial setting; or
 399 (f) A bona fide news media organization possessing or
 400 promoting a sexually explicit image for a legitimate and

401 newsworthy purpose.

402 (8) A violation of this section is committed within this
 403 state if any conduct that is an element of the offense, or any
 404 harm to the depicted individual resulting from the offense,
 405 occurs within this state.

406 (9) Prosecution of a person for an offense under this
 407 section does not prohibit prosecution of that person in this
 408 state for a violation of any other law of this state, including
 409 a law providing for greater penalties than prescribed in this
 410 section or any other crime related to child pornography or the
 411 sexual performance or the sexual exploitation of children.

412 Section 6. Present subsections (7) through (11) and (12)
 413 through (20) of section 847.001, Florida Statutes, are
 414 renumbered as subsections (8) through (12) and (14) through
 415 (22), respectively, subsection (3) and present subsections (8),
 416 (16), and (19) of that section, are amended, and new subsections
 417 (7) and (13) are added to that section, to read:

418 847.001 Definitions.—As used in this chapter, the term:

419 (3) "Child pornography" means:

420 (a) Any image depicting a minor engaged in sexual conduct;
 421 or

422 (b) Any image that has been created, altered, adapted, or
 423 modified by electronic, mechanical, or other means, to portray
 424 an identifiable minor engaged in sexual conduct.

425 (7) "Identifiable minor" means a person:

426 (a) Who was a minor at the time the image was created,
 427 altered, adapted, or modified, or whose image as a minor was
 428 used in the creation, alteration, adaptation, or modification of
 429 the image; and

430 (b) Who is recognizable as an actual person by the
 431 person's face, likeness, or other distinguishing characteristic,
 432 such as a unique birthmark, or other recognizable feature.

433
 434 The term may not be construed to require proof of the actual
 435 identity of the identifiable minor.

436 (9)-(8) "Minor" or "child" means any person, whose identity
 437 is known or unknown, younger than under the age of 18 years of
 438 age.

439 (13) "Promote" means to procure, manufacture, issue, sell,
 440 give, provide, lend, mail, deliver, transfer, transmit,
 441 transmute, publish, distribute, circulate, disseminate, present,
 442 exhibit, send, post, share, or advertise or to offer or agree to
 443 do the same.

444 (18)-(16) "Sexual conduct" means actual or simulated sexual
 445 intercourse, deviate sexual intercourse, sexual bestiality,
 446 masturbation, or sadomasochistic abuse; actual or simulated lewd
 447 exhibition of the genitals; actual physical contact with a
 448 person's clothed or unclothed genitals, pubic area, buttocks,
 449 or, if such person is a female, breast with the intent to arouse
 450 or gratify the sexual desire of either party; or any act or

451 | conduct which constitutes sexual battery or simulates that
 452 | sexual battery is being or will be committed. A mother's
 453 | breastfeeding of her baby does not under any circumstance
 454 | constitute "sexual conduct."

455 | ~~(21)-(19)~~ "Simulated" means the explicit depiction of
 456 | conduct described in subsection (18) ~~(16)~~ which creates the
 457 | appearance of such conduct and which exhibits any uncovered
 458 | portion of the breasts, genitals, or buttocks.

459 | Section 7. Subsection (5) of section 847.011, Florida
 460 | Statutes, is amended to read:

461 | 847.011 Prohibition of certain acts in connection with
 462 | obscene, lewd, etc., materials; penalty.—

463 | (5)(a)1. A person may not knowingly sell, lend, give away,
 464 | distribute, transmit, show, or transmute; offer to sell, lend,
 465 | give away, distribute, transmit, show, or transmute; have in his
 466 | or her possession, custody, or control with the intent to sell,
 467 | lend, give away, distribute, transmit, show, or transmute; or
 468 | advertise in any manner an obscene, child-like sex doll.

469 | 2.a. Except as provided in sub-subparagraph b., a person
 470 | who violates this paragraph commits a felony of the third
 471 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 472 | 775.084.

473 | b. A person who is convicted of violating this paragraph a
 474 | second or subsequent time commits a felony of the second degree,
 475 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

476 (b)1. ~~Except as provided in subparagraph 2.,~~ A person who
 477 knowingly has in his or her possession, custody, or control an
 478 obscene, child-like sex doll commits a felony misdemeanor of the
 479 third first degree, punishable as provided in s. 775.082, ~~or s.~~
 480 775.083, or 775.084.

481 2. ~~A person who is convicted of violating this paragraph a~~
 482 ~~second or subsequent time commits a felony of the third degree,~~
 483 ~~punishable as provided in s. 775.082 or s. 775.083.~~

484 Section 8. Subsection (1) of section 847.0137, Florida
 485 Statutes, is amended to read:

486 847.0137 Transmission of pornography by electronic device
 487 or equipment prohibited; penalties.—

488 (1) As used in this section, the term ~~For purposes of this~~
 489 ~~section:~~

490 ~~(a) "Minor" means any person less than 18 years of age.~~

491 ~~(b)~~ "Transmit" means the act of sending and causing to be
 492 delivered, including the act of providing access for receiving
 493 and causing to be delivered, any image, information, or data
 494 ~~from one or more persons or places to one or more other persons~~
 495 ~~or places~~ over or through any medium, including the Internet or
 496 an interconnected network, by use of any electronic equipment or
 497 other device.

498
 499 The provisions of this section do not apply to subscription-
 500 based transmissions such as list servers.

501 Section 9. Paragraphs (c), (d), and (e) of subsection (3)
 502 of section 921.0022, Florida Statutes, are amended to read:

503 921.0022 Criminal Punishment Code; offense severity
 504 ranking chart.—

505 (3) OFFENSE SEVERITY RANKING CHART

506 (c) LEVEL 3

507

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor

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509

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511

512

vehicle with identification
number plate removed.

513

319.33(1) (a) 3rd Alter or forge any certificate
of title to a motor vehicle or
mobile home.

514

319.33(1) (c) 3rd Procure or pass title on stolen
vehicle.

515

319.33(4) 3rd With intent to defraud,
possess, sell, etc., a blank,
forged, or unlawfully obtained
title or registration.

516

327.35(2) (b) 3rd Felony BUI.

517

328.05(2) 3rd Possess, sell, or counterfeit
fictitious, stolen, or
fraudulent titles or bills of
sale of vessels.

518

328.07(4) 3rd Manufacture, exchange, or
possess vessel with counterfeit
or wrong ID number.

CS/CS/HB 1453

2022

519	376.302 (5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
520	379.2431 (1) (e) 5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
521	379.2431 (1) (e) 6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
522	379.2431 (1) (e) 7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle

Protection Act.

523

400.9935(4) (a) 3rd Operating a clinic, or offering
or (b) services requiring licensure,
without a license.

524

400.9935(4) (e) 3rd Filing a false license
application or other required
information or failing to
report information.

525

440.1051(3) 3rd False report of workers'
compensation fraud or
retaliation for making such a
report.

526

501.001(2) (b) 2nd Tampers with a consumer product
or the container using
materially false/misleading
information.

527

624.401(4) (a) 3rd Transacting insurance without a
certificate of authority.

528

624.401(4) (b) 1. 3rd Transacting insurance without a

certificate of authority;
 premium collected less than
 \$20,000.

529

626.902 (1) (a) & 3rd Representing an unauthorized
 (b) insurer.

530

697.08 3rd Equity skimming.

531

790.15 (3) 3rd Person directs another to
 discharge firearm from a
 vehicle.

532

806.10 (1) 3rd Maliciously injure, destroy, or
 interfere with vehicles or
 equipment used in firefighting.

533

806.10 (2) 3rd Interferes with or assaults
 firefighter in performance of
 duty.

534

810.09 (2) (c) 3rd Trespass on property other than
 structure or conveyance armed
 with firearm or dangerous
 weapon.

535	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
536	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
537	812.015 (8) (b)	3rd	Retail theft with intent to sell; conspires with others.
538	812.081 (2)	3rd	Theft of a trade secret.
539	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
540	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
541	817.233	3rd	Burning to defraud insurer.
542	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor

vehicle accidents.

543 817.234 (11) (a) 3rd Insurance fraud; property value
less than \$20,000.

544 817.236 3rd Filing a false motor vehicle
insurance application.

545 817.2361 3rd Creating, marketing, or
presenting a false or
fraudulent motor vehicle
insurance card.

546 817.413 (2) 3rd Sale of used goods of \$1,000 or
more as new.

547 817.49 (2) (b) 1. 3rd Willful making of a false
report of a crime causing great
bodily harm, permanent
disfigurement, or permanent
disability.

548 831.28 (2) (a) 3rd Counterfeiting a payment
instrument with intent to
defraud or possessing a

549			counterfeit payment instrument with intent to defraud.
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
550	<u>836.13(2)</u>	<u>3rd</u>	<u>Promoting an altered sexual depiction.</u>
551	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
552	843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
553	860.15(3)	3rd	Overcharging for repairs and parts.
554	870.01(2)	3rd	Riot.
555	870.01(4)	3rd	Inciting a riot.
556	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver

cannabis (or other s.
 893.03(1) (c), (2) (c)1.,
 (2) (c)2., (2) (c)3., (2) (c)6.,
 (2) (c)7., (2) (c)8., (2) (c)9.,
 (2) (c)10., (3), or (4) drugs).

557

893.13(1) (d) 2. 2nd Sell, manufacture, or deliver
 s. 893.03(1) (c), (2) (c)1.,
 (2) (c)2., (2) (c)3., (2) (c)6.,
 (2) (c)7., (2) (c)8., (2) (c)9.,
 (2) (c)10., (3), or (4) drugs
 within 1,000 feet of
 university.

558

893.13(1) (f) 2. 2nd Sell, manufacture, or deliver
 s. 893.03(1) (c), (2) (c)1.,
 (2) (c)2., (2) (c)3., (2) (c)6.,
 (2) (c)7., (2) (c)8., (2) (c)9.,
 (2) (c)10., (3), or (4) drugs
 within 1,000 feet of public
 housing facility.

559

893.13(4) (c) 3rd Use or hire of minor; deliver
 to minor other controlled
 substances.

560	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
561	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
562	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
563	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
564	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
565	893.13(8)(a)1.	3rd	Knowingly assist a patient,

other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

566

893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

567

893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

568

893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the

practitioner.

569

918.13(1) (a) 3rd Alter, destroy, or conceal
investigation evidence.

570

944.47 3rd Introduce contraband to
(1) (a)1. & 2. correctional facility.

571

944.47(1) (c) 2nd Possess contraband while upon
the grounds of a correctional
institution.

572

985.721 3rd Escapes from a juvenile
facility (secure detention or
residential commitment
facility).

573

574 (d) LEVEL 4

575

Florida	Felony	Description
Statute	Degree	

576

316.1935(3) (a) 2nd Driving at high speed or with
wanton disregard for safety
while fleeing or attempting to

elude law enforcement officer
 who is in a patrol vehicle with
 siren and lights activated.

577

499.0051(1) 3rd Failure to maintain or deliver
 transaction history,
 transaction information, or
 transaction statements.

578

499.0051(5) 2nd Knowing sale or delivery, or
 possession with intent to sell,
 contraband prescription drugs.

579

517.07(1) 3rd Failure to register securities.

580

517.12(1) 3rd Failure of dealer, associated
 person, or issuer of securities
 to register.

581

784.07(2) (b) 3rd Battery of law enforcement
 officer, firefighter, etc.

582

784.074(1) (c) 3rd Battery of sexually violent
 predators facility staff.

583

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584	784.075	3rd	Battery on detention or commitment facility staff.
585	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
586	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
587	784.081(3)	3rd	Battery on specified official or employee.
588	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
589	784.083(3)	3rd	Battery on code inspector.
590	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
	787.03(1)	3rd	Interference with custody; wrongly takes minor from

appointed guardian.

591 787.04 (2) 3rd Take, entice, or remove child
beyond state limits with
criminal intent pending custody
proceedings.

592 787.04 (3) 3rd Carrying child beyond state
lines with criminal intent to
avoid producing child at
custody hearing or delivering
to designated person.

593 787.07 3rd Human smuggling.

594 790.115 (1) 3rd Exhibiting firearm or weapon
within 1,000 feet of a school.

595 790.115 (2) (b) 3rd Possessing electric weapon or
device, destructive device, or
other weapon on school
property.

596 790.115 (2) (c) 3rd Possessing firearm on school
property.

597	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
598	806.135	2nd	Destroying or demolishing a memorial or historic property.
599	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
600	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
601	810.06	3rd	Burglary; possession of tools.
602	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
603	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.

604	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree; specified items.
605	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
606	817.505 (4) (a)	3rd	Patient brokering.
607	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
608	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
609	817.625 (2) (a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
610	817.625 (2) (c)	3rd	Possess, sell, or deliver skimming device.
611			

612	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
613	<u>836.14 (2)</u>	<u>3rd</u>	<u>Theft of a sexually explicit image.</u>
614	<u>836.14 (3)</u>	<u>3rd</u>	<u>Willful possession of a stolen sexually explicit image with intent to promote for pecuniary or any other financial gain.</u>
615	837.02 (1)	3rd	Perjury in official proceedings.
616	837.021 (1)	3rd	Make contradictory statements in official proceedings.
617	838.022	3rd	Official misconduct.
618	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.

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619	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
620	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
621	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
622	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
623	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
624	870.01(3)	2nd	Aggravated rioting.
625	870.01(5)	2nd	Aggravated inciting a riot.

626	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
627	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
628	914.14(2)	3rd	Witnesses accepting bribes.
629	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
630	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
631	916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
632	918.12	3rd	Tampering with jurors.
	934.215	3rd	Use of two-way communications

device to facilitate commission of a crime.

633

944.47(1) (a) 6. 3rd Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.

634

951.22(1) (h), 3rd Intoxicating drug, (j) & (k) instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

635

636 (e) LEVEL 5

637

Florida	Felony	Description
Statute	Degree	

638

316.027(2) (a) 3rd Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.

639

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640	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
641	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
642	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
643	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap

tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

644

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

645

379.407 (5) (b) 3. 3rd Possession of 100 or more undersized spiny lobsters.

646

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

647

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

648

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

649

440.381 (2) 3rd Submission of false,

misleading, or incomplete
 information with the purpose of
 avoiding or reducing workers'
 compensation premiums.

650 624.401 (4) (b) 2. 2nd Transacting insurance without a
 certificate or authority;
 premium collected \$20,000 or
 more but less than \$100,000.

651 626.902 (1) (c) 2nd Representing an unauthorized
 insurer; repeat offender.

652 790.01 (2) 3rd Carrying a concealed firearm.

653 790.162 2nd Threat to throw or discharge
 destructive device.

654 790.163 (1) 2nd False report of bomb,
 explosive, weapon of mass
 destruction, or use of firearms
 in violent manner.

655 790.221 (1) 2nd Possession of short-barreled
 shotgun or machine gun.

656	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
657	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
658	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
659	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
660	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
661	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
662			

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663	812.015 (8) (a) & (c) - (e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
664	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
665	812.081(3)	2nd	Trafficking in trade secrets.
666	812.131(2)(b)	3rd	Robbery by sudden snatching.
667	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
668	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
669	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	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.

670

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 persons.

671

817.611 (2) (a) 2nd

Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

672

817.625 (2) (b) 2nd

Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

673

825.1025(4) 3rd

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

674

675	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child <u>pornography</u> .
676	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child <u>pornography</u> .
677	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
678	<u>836.14 (4)</u>	<u>2nd</u>	<u>Willful promotion of a stolen sexually explicit image for pecuniary or any other financial gain.</u>
	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.

679 843.01 3rd Resist officer with violence to
person; resist arrest with
violence.

680 847.0135(5) (b) 2nd Lewd or lascivious exhibition
using computer; offender 18
years or older.

681 847.0137 3rd Transmission of pornography by
(2) & (3) electronic device or equipment.

682 847.0138 3rd Transmission of material
(2) & (3) harmful to minors to a minor by
electronic device or equipment.

683 874.05(1) (b) 2nd Encouraging or recruiting
another to join a criminal
gang; second or subsequent
offense.

684 874.05(2) (a) 2nd Encouraging or recruiting

person under 13 years of age to
join a criminal gang.

685

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)5.
drugs).

686

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)6.,
(2)(c)7., (2)(c)8., (2)(c)9.,
(2)(c)10., (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.

687

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) 5.
 drugs) within 1,000 feet of
 university.

688

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) 6.,
 (2) (c) 7., (2) (c) 8., (2) (c) 9.,
 (2) (c) 10., (3), or (4) within
 1,000 feet of property used for
 religious services or a
 specified business site.

689

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) 5.
 drugs) within 1,000 feet of
 public housing facility.

690

893.13(4) (b) 2nd Use or hire of minor; deliver
 to minor other controlled
 substance.

713 Section 11. Subsection (1) of section 847.0141, Florida
 714 Statutes, is amended to read:

715 847.0141 Sexting; prohibited acts; penalties.—

716 (1) A minor commits the offense of sexting if he or she
 717 knowingly:

718 (a) Uses a computer, or any other device capable of
 719 electronic data transmission or distribution, to transmit or
 720 distribute to another minor any photograph or video of any
 721 person which depicts nudity, as defined in s. 847.001 ~~s.~~
 722 ~~847.001(9)~~, and is harmful to minors, as defined in s. 847.001
 723 ~~s. 847.001(6)~~.

724 (b) Possesses a photograph or video of any person that was
 725 transmitted or distributed by another minor which depicts
 726 nudity, as defined in s. 847.001 ~~s. 847.001(9)~~, and is harmful
 727 to minors, as defined in s. 847.001 ~~s. 847.001(6)~~. A minor does
 728 not violate this paragraph if all of the following apply:

729 1. The minor did not solicit the photograph or video.

730 2. The minor took reasonable steps to report the
 731 photograph or video to the minor's legal guardian or to a school
 732 or law enforcement official.

733 3. The minor did not transmit or distribute the photograph
 734 or video to a third party.

735 Section 12. This act shall take effect October 1, 2022.