

# FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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**BILL #:** [CS/HB 757](#)

**TITLE:** Sexual Images

**SPONSOR(S):** Redondo, Kincart Jonsson

**COMPANION BILL:** [SB 1180](#) (Gaetz)

**LINKED BILLS:** None

**RELATED BILLS:** None

## Committee References

[Criminal Justice](#)

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## SUMMARY

### **Effect of the Bill:**

CS/HB 757 prohibits a person from willfully generating an altered sexual depiction of an identifiable person, without the consent of the identifiable person, as a third-degree felony, ranked as a Level 3 offense on the offense severity ranking chart.

The bill also authorizes a person who is portrayed in an altered sexual depiction without his or her consent to initiate a civil cause of action against a person who willfully generates such an altered sexual depiction.

Additionally, the bill provides criteria that may be used to evidence actual or simulated lewd exhibition of the genitals of a minor for the purposes of classifying an image as child pornography.

### **Fiscal or Economic Impact:**

The bill may have an indeterminate positive impact on jail and prison beds by creating a new felony offense for generating altered sexual depictions, which may result in more jail and prison admissions. Additionally, the bill may have an indeterminate positive fiscal impact on any person who is portrayed in an altered sexual depiction without his or her consent by authorizing such a person to initiate a civil action to recover monetary damages from a person who generates such an altered sexual depiction.

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## ANALYSIS

### **EFFECT OF THE BILL:**

CS/HB 757 prohibits a person from willfully generating an [altered sexual depiction](#) of an identifiable person, without the consent of the identifiable person. A person who generates such an altered sexual depiction commits a third-degree felony, ranked as a Level 3 offense on the [offense severity ranking chart](#). (Sections [2](#) and [3](#))

The bill authorizes a person who is portrayed in an altered sexual depiction without his or her consent to initiate a civil cause of action against a person who willfully generates such an altered sexual depiction to obtain appropriate relief to prevent or remedy the generation of such a depiction, including:

- Injunctive relief.
- Monetary damages to include \$10,000 or actual damages incurred.
- Reasonable attorney fees and costs. (Section [2](#))

The bill defines “generate” to mean to create, alter, adapt, or modify any image by electronic, mechanical, or other computer-generated means to portray an identifiable person or to offer or agree to do the same. (Section [2](#))

The bill specifies that in determining whether an image constitutes [child pornography](#), “actual or simulated lewd exhibition of the genitals” of the minor, may be evidenced by the overall content of the image, taking into account the age of the minor depicted and, including, but not limited to, whether:

**STORAGE NAME:** h0757.CRM

**DATE:** 3/20/2025

- The focal point of the image is on the minor’s genitals;
- The setting of the image is sexually suggestive or in a place or pose generally associated with sexual conduct;
- The minor is depicted in an unnatural pose, or in inappropriate attire, considering the age of the minor;
- The image suggests sexual coyness or a willingness to engage in sexual conduct; or
- The image is intended or designed to elicit a sexual response in the viewer. (Section [1](#))

The bill provides an effective date of October 1, 2025. (Section [4](#))

**FISCAL OR ECONOMIC IMPACT:**

STATE GOVERNMENT:

The bill may have an indeterminate positive impact on prison beds by creating a new felony offense for generating altered sexual depictions, which may result in more prison admissions.

LOCAL GOVERNMENT:

The bill may have an indeterminate positive impact on jail beds by creating a new felony offense for generating altered sexual depictions, which may result in more jail admissions.

PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on any person who is portrayed in an altered sexual depiction without his or her consent by authorizing such a person to initiate a civil action to recover monetary damages from a person who generates such an altered sexual depiction.

**RELEVANT INFORMATION**

**SUBJECT OVERVIEW:**

**[Altered Sexual Depictions](#)**

Section [836.13, F.S.](#), prohibits a person from willfully and maliciously promoting<sup>1</sup> an altered sexual depiction of an identifiable person,<sup>2</sup> without the consent of the identifiable person, when the person promoting such altered sexual depiction knows or reasonably should have known that such depiction was an altered sexual depiction. A person who promotes an altered sexual depiction commits a third-degree felony, ranked as a Level 3 offense on the offense severity ranking chart.<sup>3</sup>

“Altered sexual depiction” means any visual depiction<sup>4</sup> that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person:

- With the nude body parts<sup>5</sup> of another person as the nude body parts of the identifiable person;
- With computer-generated nude body parts as the nude body parts of the identifiable person; or
- Engaging in sexual conduct<sup>6</sup> in which the identifiable person did not engage.<sup>7</sup>

<sup>1</sup> “Promote” means to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same. S. [836.13\(1\)\(d\), F.S.](#)

<sup>2</sup> “Identifiable person” means a person who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. S. [836.13\(1\)\(b\), F.S.](#)

<sup>3</sup> S. [921.0022\(3\)\(c\), F.S.](#)

<sup>4</sup> “Visual depiction” includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or other visual representation. S. [836.13\(1\)\(e\), F.S.](#)

<sup>5</sup> “Nude body parts” means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. The term does not under any circumstances include a mother breastfeeding her baby. S. [836.13\(1\)\(c\), F.S.](#)

<sup>6</sup> S. [847.001\(19\), F.S.](#)

<sup>7</sup> S. [836.13\(1\)\(a\), F.S.](#)

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability for promoting an altered sexual depiction.<sup>8</sup>

A person who is portrayed in such an altered sexual depiction without his or her consent may initiate a civil cause of action against a person who willfully and maliciously promoted such depiction and may obtain appropriate relief to prevent or remedy the promotion, including:

- Injunctive relief.
- Monetary damages to include \$10,000 or actual damages incurred.
- Reasonable attorney fees and costs.<sup>9</sup>

### Legal Considerations

As a general rule, pornography can be banned only if obscene.<sup>10</sup> However, nonconsensual altered sexual depictions are distinguishable from consensual pornography as the person being depicted has not given his or her consent and did not actually engage in the sexual behavior he or she is depicted as doing. Such depictions may exploit the depicted person for other's gratification and may cause emotional and reputational harm stemming from subsequent uses of the depiction and society's response to the person depicted.<sup>11</sup>

### Child Pornography

Section [s. 827.071, F.S.](#), defines child pornography as:

- Any image depicting a minor<sup>12</sup> engaged in sexual conduct; or
- Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor<sup>13</sup> engaged in sexual conduct.<sup>14</sup>

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse,<sup>15</sup> sexual bestiality,<sup>16</sup> masturbation, or sadomasochistic abuse;<sup>17</sup> actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery<sup>18</sup> or simulates that sexual battery is being or will be committed.<sup>19</sup>

### U.S. v. Dost

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<sup>8</sup> S. [836.13\(4\), F.S.](#)

<sup>9</sup> S. [836.13\(5\), F.S.](#)

<sup>10</sup> *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 240 (2002).

<sup>11</sup> Mathew B. Kugler and Carly Pace, *Deepfake Privacy: Attitudes and Regulation*, Northwestern University Law Review, 2021 Vol 116:611, p. 624-25, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1476&context=nulr> (last visited Mar. 16, 2025).

<sup>12</sup> “Minor” means any person, whose identity is known or unknown, younger than 18 years of age. S. [827.071\(1\)\(a\), F.S.](#)

<sup>13</sup> “Identifiable minor” means a person: who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. The term may not be construed to require proof of the actual identity of the identifiable minor. S. [827.071\(1\)\(e\), F.S.](#)

<sup>14</sup> S. [827.071\(1\)\(b\), F.S.](#)

<sup>15</sup> “Deviate sexual intercourse” means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva. S. [827.071\(1\)\(c\), F.S.](#)

<sup>16</sup> “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other. S. [827.071\(1\)\(k\), F.S.](#)

<sup>17</sup> “Sadomasochistic abuse” means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself. S. [827.071\(1\)\(i\), F.S.](#)

<sup>18</sup> “Sexual battery” means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose. S. [827.071\(1\)\(j\), F.S.](#)

<sup>19</sup> S. [827.071\(1\)\(l\), F.S.](#) A mother's breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

In *U.S. v. Dost*,<sup>20</sup> the critical issue for the court to determine was whether pictures taken by the defendants depicted minors engaged in sexually explicit conduct, which included the lascivious exhibition of the genitals or pubic area.<sup>21</sup> The court opined that a determination of whether there was lascivious exhibition should be made on a case-by-case basis using general principles as a guide for analysis. The court held that a trier of fact should look at the following factors, among any others that may be relevant in a particular case, when determining whether a visual depiction of a minor constitutes lascivious exhibition of the genitals or pubic area:

- Whether the focal point of the visual depiction is on the child's genitalia or pubic area;
- Whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity;
- Whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child;
- Whether the child is fully or partially clothed, or nude;
- Whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity;
- Whether the visual depiction is intended or designed to elicit a sexual response in the viewer.<sup>22</sup>

The court asserted that a visual depiction need not involve all of the above-listed factors to constitute lascivious exhibition of the genitals or pubic area, but rather that, a determination should be made based on the overall content of the visual depiction, taking into account the age of the minor.<sup>23</sup>

### **Generated Child Pornography**

Section [827.072, F.S.](#), prohibits a person from knowingly possessing or controlling or intentionally viewing<sup>24</sup> a photograph, a motion picture, a representation, an image, a data file, a computer depiction, or any other presentation which, in whole or in part, he or she knows includes generated child pornography. A person who violates this paragraph commits a third-degree felony.<sup>25, 26</sup>

Additionally, a person, commits a third-degree felony, if he or she intentionally creates generated child pornography.<sup>27</sup>

“Generated child pornography” means any image that has been created, altered, adapted, or modified by electronic, mechanical, or other computer-generated means to portray a fictitious person, who a reasonable person would regard as being a real person younger than 18 years of age, engaged in sexual conduct.<sup>28, 29</sup>

### **Offense Severity Ranking Chart**

Felony offenses which are subject to the Criminal Punishment Code<sup>30</sup> are listed in a single offense severity ranking chart (OSRC),<sup>31</sup> which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense

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<sup>20</sup> 636 F. Supp. 828 (S.D. California 1986).

<sup>21</sup> “Sexually explicit conduct” as defined in federal law means, actual or simulated: sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person. 18 U.S.C. § 2256.

<sup>22</sup> *Dost*, 636 F. Supp. at 832.

<sup>23</sup> *Id.*

<sup>24</sup> “Intentionally view” means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time. S. [827.071\(1\)\(f\), F.S.](#)

<sup>25</sup> This offense is not ranked on the offense severity ranking chart (OSRC), and as such, defaults to a Level 1 offense. Ss. [921.0022](#) and [921.0023, F.S.](#)

<sup>26</sup> A third-degree felony is punishable by a term of up to five years' imprisonment and a fine of \$5,000. Ss. [775.082](#), [775.083](#), or [775.084, F.S.](#)

<sup>27</sup> S. [827.072\(2\)\(b\), F.S.](#) This offense is not ranked on the OSRC, and as such, defaults to a Level 1 offense. S. [921.0023, F.S.](#)

<sup>28</sup> S. [827.072\(1\)\(a\), F.S.](#)

<sup>29</sup> “Sexual conduct” has the same meaning as in s. [827.071\(1\)\(i\), F.S.](#)

<sup>30</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. [921.002, F.S.](#)

<sup>31</sup> S. [921.0022, F.S.](#)

listed in the OSRC is assigned a level according to the severity of the offense.<sup>32, 33</sup> A person’s primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.<sup>34, 35</sup> The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.<sup>36</sup>

**RECENT LEGISLATION:**

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2022	<a href="#">CS/CS/SB 1798</a>	Harding	Book	Took effect October 1, 2022.

**BILL HISTORY**

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Criminal Justice Subcommittee</a>	17 Y, 0 N, As CS	3/19/2025	Hall	Leshko
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none"> <li>• Removed language expanding the definition of “child pornography.”</li> <li>• Removed an offense related to possessing an altered sexual depiction.</li> <li>• Removed a requirement for the state to prove that a person who willfully generated an altered sexual depiction, knew or reasonably should have known that such depiction was an altered sexual depiction.</li> </ul>			

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**THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.**  
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<sup>32</sup> S. [921.0022\(2\), F.S.](#)

<sup>33</sup> Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a Level 1; an unlisted second-degree felony defaults to a Level 4; an unlisted first-degree felony defaults to a Level 7; an unlisted first-degree felony punishable by life defaults to a Level 9; and an unlisted life felony defaults to a Level 10. S. [921.0023, F.S.](#)

<sup>34</sup> Ss. [921.0022](#) and [921.0024, F.S.](#)

<sup>35</sup> A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. [921.0024\(1\), F.S.](#)

<sup>36</sup> If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. [921.0024\(2\), F.S.](#)