**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

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| BILL: | SB 1750 |
| INTRODUCER: | Senator Martin |
| SUBJECT: | Criminal Sexual Conduct |
| DATE: | January 23, 2026 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Parker | Stokes | CJ | **Pre-meeting** |
| 2. | | | ACJ | |
| 3. | | | FP | |

## I. Summary:


SB 1750 amends multiple sections across the Florida Statutes to increase penalties, provide mandatory minimum sentencing, and revise crimes related to sex offenses. Specifically, the bill amends:

- Section 775.0847, F.S., to revise the circumstances under which the violation of specified offenses relating to child pornography must be reclassified to the next higher degree and provide for mandatory minimum terms of imprisonment.
- Section 794.0116, F.S., to increase mandatory minimum prison sentences for certain sexual offenses committed by persons previously convicted of a sexual offense.
- Section 827.071, F.S., to revise the terms "child" or "minor," increase penalties for use of a child in a sexual performance and provide mandatory minimum sentencing for such offense, create the crime of aggravated use of a child in a sexual performance, provide a mandatory minimum sentence for promoting a sexual performance by a child, and increase the penalty for knowingly soliciting, etc., child pornography.
- Section 827.072, F.S., to provide increased penalties and provide a mandatory minimum sentence for persons who intentionally create generated child pornography.
- Section 828.126, F.S., to provide increased penalties for offenses relating to sexual activities involving animals.
- Section 847.011, F.S., to provide that this section, relating to the prohibition of certain acts in connection with obscene, lewd, etc., material, does not apply to persons charged solely under a section relating to child pornography.
- Section 847.0137, F.S., to define the terms "access credential," "cloud storage," "link," and "transmit," creates a crime relating to knowingly granting or facilitating access to child pornography, increases penalties related to child pornography, and provides a good faith exception for reporting information to law enforcement.
- Section 921.0022, F.S., to rank offenses relating to criminal sexual conduct in the Offense Severity Ranking Chart (OSRC) of the Criminal Punishment Code.

The bill has an indeterminately positive fiscal impact. *See Section V. Fiscal Impact Statement*.

The bill takes effect on October 1, 2026.

## II. Present Situation:

Florida law currently contains a variety of statutes that prohibit acts relating to criminal sexual conduct. A summary of these laws follows.

**Sexual Performance by a Child, Child Pornography, Possession or Promotion of Child Pornography, Sexual Activity Involving Animals**

***Sexual performance by a child***

A person is guilty of the use of a child in a sexual performance, if they direct, or promote any performance which includes sexual conduct by a child.[1] A person who violates this offense commits a second degree felony.[2]

It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, that includes child pornography. The possession of three or more copies of such media is prima facie evidence of an intent to promote.[3] A person who violates this offense commits a second degree felony.

It is unlawful for any person to knowingly solicit, possess, control, or intentionally view any media which, they know to include child pornography. The solicitation, possession, control, or intentional viewing of each such media is a separate offense. If such media depicts more than one child, then each such child in each such media that is knowingly solicited, possessed, controlled, or intentionally viewed is a separate offense.[4] A person who violates this offense commits a third degree felony.[5]

***Child Pornography***

Child pornography is any image depicting a minor 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 engaged in sexual conduct.[6]

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,[7] the Supreme Court of the United States recognized that states have a compelling interest in

[1] Section 827.071(3), F.S.
[2] A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine up to $10,000, as provided in ss. 775.082, 775.083, and 775.084, F.S.
[3] Section 827.071(4), F.S.
[4] Section 827.071(5)(a), F.S.
[5] A third degree felony is generally punishable by not more than 5 years in prison and a fine not exceeding $5,000, as provided in ss. 775.082, 775.083, and 775.084, F.S.
[6] Section 827.071(1)(b), F.S.
[7] *New York v. Ferber*, 458 U.S. 747 (1982).

safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Court noted that it was "unlikely that visual depictions of children . . . lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work."[8]

The use of AI has also been used to create child pornography, sometimes referred to as "morphing." The Federal Government prohibits such images, however, the Supreme Court of the United States has found that the child or minor depicted in the image must be a real minor for such bans to pass constitutional muster.[9] Under these principles, states have constitutionally been able to criminalize the possession, distribution, etc., of child pornography. However, the constitutionality of criminalizing such acts is less clear when the images at issue are morphed pornography.

***Child Pornography Prevention Action of 1996***

In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),[10] which created a definition of "child pornography." This criminalized, for the first time, acts relating to morphed child pornography. Under the CPPA, "child pornography" was defined as:

(8) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct,[11] where:
  (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
  (B) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct (i.e., *virtual child pornography – created without using an actual child*);
  (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor[12] is engaging in sexually explicit conduct (i.e*., morphed child pornography*); or
  (D) Such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.[13]

In 2002, the United States Supreme Court decided *Ashcroft v. Free Speech Coalition*,[14] a case in which a California trade association for the adult-entertainment industry challenged section 2256(8)(B) of the CPPA as unconstitutionally overbroad. As noted above, section 2256(8)(B)

[8] *Id*. at 763.
[9] *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).
[10] Pub. L. No. 104-208, s. 121.
[11] The term "sexually explicit conduct" was defined as 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. s. 2256(2) (1996 ed.).
[12] The term "identifiable minor" was defined as 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, and: who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction. The term was not be construed to require proof of the actual identity of the identifiable minor. 18 U.S.C. s. 2556(9) (1996 ed.).
[13] 18 U.S.C. s. 2556(8) (1996 ed.).
[14] 535 U.S. 234 (2002).

made it a crime to possess or distribute images depicting a child or what appears to be a child, engaging in sexually explicit conduct (i.e., virtual child pornography).[15]

The Court held that the "speech" criminalized in the challenged provision of the CPPA violated the First Amendment because it extended the federal prohibition against child pornography to sexually explicit images that appeared to depict minors but were produced without using any real children.[16] The Court decided that by prohibiting child pornography that did not depict an actual child, section 2256(8)(B) of the CPPA "abridged the freedom to engage in a substantial amount of lawful speech" and was therefore overbroad and unconstitutional.[17]

The *Ashcroft* decision did not specifically address the constitutionality of 18 U.S.C. 2256(8)(C) (prohibiting *morphed* child pornography), it did note, in dictum, that "[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children. . ."[18] Courts have taken this dictum to suggest that the *Ashcroft* court would have deemed morphed child pornography as not protected by the First Amendment.[19]

***Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (Protect Act)***

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the "Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act" (Protect Act) in 2003.[20] The Protect Act, in part, narrowed the definition of "virtual" child pornography in section (8)(B) of the CPPA to include virtual or computer-generated images that are "indistinguishable from" images of actual minors engaging in sexually explicit conduct.[21]

Notably, the definition of "morphed" child pornography contained in section 2256(8)(C) remained unchanged between the CPPA and the Protect Act.

***Case Law since the Passage of the Protect Act***

To date, the federal statutes relating to morphed child pornography have been upheld.[22] In *United States v. Bach*,[23] the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection.[24] The photograph of a well-known child entertainer's head had been "skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of [the child entertainer] sitting in the tree."[25]

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[15] 18 U.S.C. s. 2556(8) (1996 ed.).
[16] *Ashcroft*, 535 U.S. at 256.
[17] *Id.*
[18] *Id*. at 242.
[19] *McFadden v. Alabama*, 67 So. 3d 169, 181-182 (Ala. Crim. App. 2010).
[20] Pub. L. No. 108-21.
[21] 18 U.S.C. s. 2256(8)(B).
[22] *See United States v. Ramos,* 685 F. 3d 120, 134 (2d Cir. 2012), *cert. denied,* 133 S.Ct. 567 (2012); *see also Doe v. Boland*, 630 F. 3d 491, 497 (6th Cir. 2011).
[23] *United States v. Bach*, 400 F. 3d 622 (8th Cir. 2005).
[24] *Id*. at 625.
[25] *Id*.

The defendant appealed arguing that his conviction was invalid because the definition of morphed child pornography violated the First Amendment. The United States Court of Appeals for the Eighth Circuit disagreed, holding that morphed child pornography "implicate the interests of a real child," and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity.[26] The court noted that there may be instances when the "application of s. 2256(8)(C) violates the First Amendment, this is not such a case. This image involves the type of harm which can constitutionally be prosecuted under [*Ashcroft*] and *Ferber*."[27]

In *United States v. Anderson*, the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.[28] The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.[29] The court noted that the image at issue was different from the one in *Bach* in that "no minor was sexually abused."[30] However, the court held that because such images falsely portray identifiable children engaging in sexual activity, such images implicate the government's compelling interest in protecting minors. Using this reasoning, the court held that the definition of morphed child pornography was constitutional.[31]

In 2024, Florida passed laws related to generated child pornography. It is unlawful for a person to knowingly possess, control or intentionally view any media which, in whole or in part, is known to include generated child pornography. The possession, control, or intentional viewing of each such media is a separate offense.[32] A person who violates this offense commits a third degree felony.

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.[33]

Section 847.0135, F.S., specifies the criminal offense of computer pornography. It is a third degree felony for a person who:

- Knowingly compiles, enters into, or transmits[34] by use of computer;
- Makes, prints, publishes, or reproduces by other computerized means;
- Knowingly causes or allows to be entered into or transmitted by use of computer; or

[26] *Id*. at 632.
[27] *Id*. *See also United States v. Hotaling,* 634 F. 3d 725 (2d Cir. 2008), cert. denied, 132 S.Ct. 843 (2011) (citing *Bach,* the Court held that "child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment").
[28] 759 F. 3d 891 (8th Cir. 2014).
[29] *Id*.
[30] *Id*. at 895.
[31] *Id*. at 896.
[32] Section 827.072(2)(a), F.S.
[33] Section 827.072(1)(a), F.S.
[34] Section 847.0137, F.S., defines the term "transmit" to mean the act of sending and causing to be delivered, including the act of providing access for receiving and causing to be delivered, any image, information, or data over or through any medium, including the internet or an interconnected network, by use of any electronic equipment or other device.

- Buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct.[35]

Section 775.0847, F.S., reclassifies violations of sexual performance by a child; computer pornography; prohibited computer usage; traveling to meet a minor; transmission of pornography by electronic device or equipment; and transmission of material harmful to minors to a minor by electronic device or equipment, to the next higher degree if:

- The offender possesses 10 or more images of any form of child pornography[36] regardless of content; and
- The content of at least one image contains one or more of the following:
  - A child who is younger than the age of 5.
  - Sadomasochistic abuse[37] involving a child.
  - Sexual battery involving a child.
  - Sexual bestiality involving a child.
  - Any movie involving a child, regardless of length and whether the movie contains sound.[38]

In case of a third degree felony, the offense is reclassified to a second degree felony.[39]

In the case of a second degree felony, the offense is reclassified to a first degree felony.[40,41]

***Mandatory Minimum Sentencing for Sex Offenses***

Certain sexual offenses will carry mandatory minimum sentences if committed by a person who was previously convicted of or had an adjudication withheld for a specified offense.[42] A person who was previously convicted of or had adjudication withheld for sexual offenses must be sentenced to a mandatory minimum term of imprisonment as follows:

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| Lewd or lascivious molestation[43] | 10 years |
| Lewd or lascivious molestation of an elderly person or disabled person[44] | 10 years |
| Use of a child in a sexual performance[45] | 20 years |

[35] Section 847.0135(2)(a)-(c), F.S.
[36] Section 775.0847(1)(b), F.S., defines "child pornography" to mean any image depicting a minor engaged in sexual conduct.
[37] Section 775.0847(1)(e), F.S., defines "sadomasochistic abuse," to mean 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, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.
[38] Section 775.0847(2), F.S.
[39] Section 775.0847(3)(a), F.S.
[40] Section 775.0847(3)(b), F.S.
[41] A first degree felony is generally punishable by up to 30 years in prison and a fine not exceeding $10,000, as provided in ss. 775.082, 775.083, and 775.084, F.S.
[42] Section 794.0116, F.S.
[43] Section 800.04(5), F.S.
[44] Section 825.0125(3), F.S.
[45] Section 827.071(2), F.S.

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| Promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child[46] | 20 years |
| Possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography[47] | 15 years |
| Knowingly solicit, possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include child pornography[48] | 10 years |
| Computer pornography[49] | 10 years |
| Transmission of pornography by electronic device or equipment[50] | 10 years |
| Selling or buying of minors[51] | 20 years |

***Obscenity and The Miller Test***

The U.S. Supreme Court has long held that obscenity is not within the area of constitutionally protected speech, however, sex and obscenity are not synonymous. The Court held that portrayal of sex, for example, in art, literature and scientific works, is not itself a sufficient reason to deny material the constitutional protections of free speech. Obscene material is material that deals with sex in a manner appealing to prurient interests.[52] The U.S. Supreme Court's standard for determining what material is obscene has evolved over the years.[53]

In 1973, the U.S. Supreme Court developed a three-prong test in *Miller v. California*,[54] to define obscene speech. The court acknowledged the inherent dangers of undertaking to regulate any form of expression, and that statutes designed to regulate obscene materials must be carefully limited. This is the test that is still used today to determine whether speech is obscene. According to the *Miller* test, speech is determined to be obscene if:

- The average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
- The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and

[46] Section 827.071(3), F.S.
[47] Section 827.071(4), F.S.
[48] Section 827.071(5)(a), F.S.
[49] Section 847.0135, F.S.
[50] Section 847.0137, F.S.
[51] Section 847.0145, F.S.
[52] *Roth v. U.S.,* S. Ct. 1304 (1957).
[53] *See* Roth v. U.S., S. Ct. 1304 (1957); *A book named 'John Cleland's Memoirs of a Woman of Please,' et al., v. Attorney General of the Commonwealth of Massachusetts*, 86 S. Ct. 975 (1965); *Miller v. California*, 413 U.S. 15 (1973).
[54] *Miller v. California*, 413 U.S. 15 (1973).

- The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[55]

In addressing the contemporary community standard, the court in *Miller* stated "to require a state to structure obscenity proceedings around evidence of a national 'community standard' would be an exercise in futility," and held that the requirement of the jury to evaluate the materials with reference to contemporary standards of the State is constitutionally adequate.[56]

***Material Harmful to Minors***

The power of the state to control the conduct of children reaches beyond the scope of its authority over adults. The state may give minors a more restricted right than that assured to adults to determine for themselves what sex material they may read or see.[57] The U.S. Supreme Court held in *Ginsberg*, that a statute which defined obscenity of material on a basis of its appeal to minors, by prohibiting the sale of obscene material harmful to minors, to youths had a rational relation to the objective of safeguarding such minors from harm, and was constitutionally valid.[58]

Further, courts have found that the state has a "'compelling interest in protecting the physical and psychological well-being of minors' which 'extends to shielding minors from the influence of literature that is not obscene by adult standards.' In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material. No similar tailoring is required when the material is obscene material, which is not protected by the First Amendment."[59]

Despite the Court's clear ruling that a state may regulate material harmful to minors, but not obscene for adults, some statutes have been found unconstitutionally overbroad and criminalized constitutionally protected speech. For example, in *Powell's Books Inc. v. Kroger*, the Ninth Circuit Court of Appeals struck down a pair of statutes aimed at prohibiting "luring" and "grooming."[60] The first statute struck down in this case criminalized providing children under the age of 13 with sexually explicit material, and the second statute criminalized providing minors under the age of 18 with visual, verbal, or narrative descriptions of sexual conduct for the purpose of sexually arousing the minor or the furnisher, or inducing the minor to engage in sexual conduct.[61]

In *Powell's Books, Inc,* the court found that speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed simply to protect youth from ideas or images legislators find unsuitable. "To criminalize furnishing material solely intended to titillate the reader will certainly sweep up some material that appeals to the prurient interests of children and minors, but it will also criminalize a broad swath of material that does not appeal to prurient interests.[62] The court found that the statutes were overbroad and reached far more material than hardcore pornography or material that is obscene to minors.

[55] *Id.*at 24.
[56] *Id.* at 33-34.
[57] *Ginsberg v. New York*, 88 S. Ct. 1274 (1968).
[58] *Id*. at 1282
[59] *Simmons v. State*, 944 So. 2d 317 (Fla. 2006). *See also Ashcroft v. Free Speech Coal*., 535 U.S. 234, 244-45 (2002).
[60] *See Powell's Books, Inc. v. Kroger,* 622 F. 3d 1202 (2010).
[61] *Powell's Books, Inc. v. Kroger,* 622 F. 3d 1202, 1206-07 (2010).
[62] *Id*. at 1214-15.

Similarly, in 2011, in *Entertainment Merchants*, the U.S. Supreme Court found that even where the protection of children is the object the constitutional limits on governmental action apply. While *Entertainment Merchants* did not address obscenity directly, it held a statute that regulated violent video games for minors was unconstitutional, and in doing so, noted that minors are guaranteed protections of the First Amendment.

> Minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well defined circumstances may government bar public dissemination of protected materials to them. No doubt a state possesses legitimate power to protect children from harm, but that does not include a free floating power to restrict the ideas to which children may be exposed. Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.[63]

***Florida Transmission of Material Harmful to Minors***

Because the state may modify the test for obscenity as it relates to what is obscene (or "harmful to minors"), courts have upheld the *Miller* test, as modified for minors. The *Miller* test is incorporated into Florida's definition of what is "harmful to minors" in s. 847.001(7), F.S., and "obscenity" in s. 847.001(12), F.S.

Section 847.001(7), F.S., defines "harmful to minors" as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement[64] when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct *for minors*; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value *for minors*.

Section 847.0138, F.S., provides that:

- Any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor commits a third degree felony.[65]
- Any person in any jurisdiction other than this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, to a specific individual known by the defendant to be a minor commits a third degree felony.[66,67]

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[63] *Brown, Governor of California, et al., Entertainment Merchants Ass'n et al.,* 131 S. Ct. 2729, 2735-36 (2011) (citing *Ernoznik v. Jacksonville*, 422 U.S. 205 (1975); *Ginsberg v. New York*, 88 S. Ct. 1274 (1968); Prince v. Massachusetts, 321 U.S. 158 (1944)).

[64] Section 847.001(20), F.S., defines "sexual excitement" as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

[65] Section 847.0138(2), F.S.

[66] Section 847.0138(3), F.S.

[67] A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S.

The Supreme Court of Florida has upheld Florida's criminal laws relating to the transmission of harmful materials. In *Simmons*, the court noted that sexual expression which is indecent but not obscene is protected by the First Amendment, however the state may regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest.

The court in *Simmons* found that the term harmful to minors is adequately defined by a reference to the three prong miller standard, as modified to apply to minors. The court also noted that the third prong in Miller is particularly important because it allows appellate courts to impose some limitations and regularity on the definition.[68]

***Sexual Activities Involving Animals***

"Sexual contact with an animal" means any act committed between a person and an animal for the purpose of sexual gratification, abuse, or financial gain which involves:[69]

- Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;
- The fondling of the sex organ or anus of an animal; or
- The insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.

A person commits a third degree felony if he or she knowingly:[70,71]

- Engages in any sexual contact with an animal;
- Causes, aids, or abets another person to engage in any sexual contact with an animal;
- Permits any sexual contact with an animal to be conducted on any premises under his or her charge or control;
- Organizes, promotes, conducts, aids, abets, participates in as an observer, or advertises, offers, or accepts an offer of an animal for the purpose of sexual contact with such animal, or performs any service in the furtherance of an act involving any sexual contact with an animal; or
- Films, distributes, or possesses any pornographic image or video of a person and an animal engaged in any of the prohibited activities.

**Offense Severity Ranking Chart**

Felony offenses which are subject to the Criminal Punishment Code[72] are listed in a single OSRC, which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.[73,74]

[68] *Simmons v. Florida*, 944 So. 2d 317 (2006).
[69] Section 828.126(1)(a)-(c), F.S.
[70] Section 828.126(2)(a)-(e), F.S.
[71] Section 828.126(3), F.S.
[72] All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.
[73] Section 921.0022, F.S.
[74] Section 921.0022(2), F.S.

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. 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.[75]

## III. Effect of Proposed Changes:

The bill amends s. 775.0847, F.S., to revise the circumstances that trigger reclassification and provide mandatory minimum sentences when offenses are reclassified. The following offenses are subject to reclassification:

- Sex performance by a child.[76]
- Computer pornography.[77]
- Transmission of pornography by electronic device or equipment.[78]
- Transmission of materials harmful to minors by electronic device or equipment.[79]

A violation of the above offenses must be reclassified to the next higher degree if the offender:

- Possesses **20, rather than 10, or more images** of any form of child pornography, regardless of content; or
- The content of at least one image contains one or more of the following:
  - A prepubescent child, rather than a child under the age of 5.
  - Sadomasochistic abuse involving a child.
  - Sexual battery involving a child.
  - Sexual bestiality involving a child.

Reclassified offenses carry the following mandatory minimum terms of imprisonment:

- A third degree felony is reclassified to a second degree felony and requires a 5 year mandatory minimum term of imprisonment;
- A second degree felony is reclassified to a first degree felony and requires a 15 year mandatory minimum term of imprisonment; and
- A first degree felony is reclassified to a life felony and requires a 25 year mandatory minimum term of imprisonment.

The bill amends s. 794.0116, F.S., to increase mandatory minimum prison sentences for sexual offenses committed by persons previously convicted, or had an adjudication withheld, of a sexual offense. The bill increases the mandatory minimum term of imprisonment as follows:

- Lewd or Lascivious Molestation, is increased from a minimum mandatory term of imprisonment of 10 years to 15 years.[80]

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[75] Section 921.0024(2), F.S., provides that 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.
[76] Section 827.071, F.S.
[77] Section 847.0135, F.S.
[78] Section 847.0137, F.S.
[79] Section 847.0138, F.S.
[80] Section 800.04(5), F.S.

- Sexual performance by a child (producing, directing or promoting), is increased from a mandatory minimum of imprisonment term of imprisonment of 20 years to 25 years.[81]
- Selling or buying minors, is increased from a mandatory minimum term of imprisonment of 20 years to 25 years.[82]

The bill amends s. 827.071, F.S., to revise the terms "child" or "minor" to mean a person whose identity is known and who is younger than 18 years of age, or whose identity is unknown and who appears to be under 18 years of age. Additionally, the bill:

- Increases the crime of using a child in a sexual performance from a second degree felony to a first degree felony and provides a mandatory minimum term of imprisonment of 15 years.
- Provides a mandatory minimum sentence of 5 years for the crime of promoting a sexual performance by a child.
- Increases the crime of knowingly soliciting, possessing, possessing, controlling, or intentionally viewing materials that depict child pornography from a third degree felony to a second degree felony.
- Creates the crime of aggravated use of a child in a sexual performance. Aggravated use of a child in a sexual performance or inducing a child younger than 12 years of age to engage in a sexual performance, is a life felony[83] with a mandatory minimum term of imprisonment of 25 years. A person commits this offense if he or she:
    - Knowing the character and content thereof, employs, authorizes, or induces a child younger than 12 years of age to engage in a sexual performance.

The bill amends s. 827.072, F.S., to increase the penalty for creating generated child pornography from a third degree felony to a second degree felony and provide a mandatory minimum term of imprisonment of 5 years.

The bill amends s. 828.126, F.S., to increase penalties for the following offenses relating to sexual activities involving animals. The third degree felony for a person who knowingly:

- Engages in sexual conduct with an animal is increased to second degree felony.
- Causes, aids or abets another person to engage in any sexual contact with an animal, is increased second degree felony.

In addition to the penalties prescribed by law, the court must issue an order prohibiting a person convicted under this section from harboring, owning, possessing, or exercising control over any animal. The order must be effective for a minimum of 5 years after the date of the conviction. Current law provides that such an order is effective up to 5 years.

The bill amends s. 847.011, F.S., relating to the prohibition of certain acts in connection with obscene, lewd, etc., materials, to provide that this section does not apply to a person charged solely under a section relating to child pornography.

The bill amends s. 847.0137, F.S., to define the following terms:

[81] Section 827.071(2), F.S.
[82] Section 847.0145, F.S.
[83] A life felony is punishable by a term of imprisonment for life and a fine up to $15,000, as provided by ss. 775.082, 775.083, and 775.084, F.S.

- "Access credential" means any password, username, token, unique link, URL, hyperlink, or other data that allows or facilitates access to files or data stored in cloud storage.
- "Cloud storage" means any remote, networked, or third-party provided storage service that allows a user to store, host, or share digital files or data and to access those files or data through the Internet or other network, whether by direct file transfer, URL, hyperlink, sharable link, access token, credentials, or other means.
- "Link" means any URL, hyperlink, short link, shareable link, magnet link, or other string, token, or data that, when used, directs or grants access to content stored remotely, including cloud storage.

The bill creates a new second degree felony with a mandatory mini minimum sentence of five years for persons who knew or reasonably should have known that they were transmitting, distributing, posting, sharing, providing, publishing, or making accessible by any means, including by sending , posting, uploading, or otherwise providing a link, an access credential, or information that grants access to cloud storage that the person knows contains child pornography or generated child pornography, and who knowingly causes another person to view or obtain such images, or otherwise facilitates access to such material.

The bill provides an exception for a person reporting suspected child pornography. A person who in good faith, provides a link, access, credentials or other information to a law enforcement agency, prosecuting authority, or authorized forensic examiner for the purpose of reporting suspected child pornography, cooperating with an investigation, preserving evidence, or seeking lawful removal of content may not be subject to prosecution under this section for that disclosure.

The bill amends s. 921.0022, F.S., the OSRC to do the following:
- Add sexual activities involving animals[84] as a second degree felony, ranked as a Level 6.
- Add offenses where a person may not knowingly cause, permit or organize sexual conduct with an animal,[85]as a third degree felony, ranked as a Level 6.
- Add promoting a sexual performance by a child,[86] as a second degree felony, ranked as a Level 7.

The bill takes effect on October 1, 2026.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

[84] Section 828.126(2)-(3), F.S.
[85] Section 828.126(4)-(6), F.S.
[86] Section 827.071(3), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution states that, "Congress shall make no law … abridging the freedom of speech…" This language prohibits the government from having the ability to constrain the speech of citizens. However, materials that constitute child pornography, obscenity, or material harmful to minors may be restricted. Child pornography, obscenity, and material harmful to minors have been defined in ch. 847, F.S., and are consistent with federal law and the United States Supreme Court holdings regarding such laws.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a positive indeterminate fiscal impact on the Department of Corrections. The DOC may have an increase in beds due to the increased penalties and mandatory minimum sentences created in the bill.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends sections 775.0847, 794.0116, 827.071, 827.072, 828.126, 847.011, 847.0137, 775.15, 794.0115, 921.0022 of the Florida Statutes.

## IX. Additional Information:

### A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

### B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.