

1 A bill to be entitled
2 An act relating to sexual offenses; providing a short
3 title; amending s. 90.404, F.S.; revising offenses that are
4 considered "child molestation" for purposes of admitting
5 evidence of other crimes, wrongs, or acts in a criminal
6 case involving child molestation; providing for admission
7 of evidence of other crimes, wrongs, or acts in cases
8 involving a sexual offense; defining the term "sexual
9 offense"; amending s. 92.55, F.S.; authorizing the use of
10 service or therapy animals in courts hearing sexual offense
11 cases under certain circumstances; requiring certain
12 property or material that is used in a criminal proceeding
13 to remain in the care, custody, and control of the law
14 enforcement agency, the state attorney, or the court;
15 prohibiting the reproduction of such property or material
16 by the defendant when specified criteria are met by the
17 state attorney; permitting access to the materials by the
18 defendant; amending s. 395.1021, F.S.; requiring a licensed
19 facility that provides emergency room services to arrange
20 for the gathering of forensic medical evidence required for
21 investigation and prosecution from a victim who has
22 reported a sexual battery to a law enforcement agency or
23 who requests that such evidence be gathered for a possible
24 future report; amending s. 775.15, F.S.; providing that a
25 prosecution for video voyeurism in violation of specified
26 provisions may, in addition to existing time periods, be
27 commenced within 1 year after the victim of video voyeurism
28 obtains actual knowledge of the existence of such a

29 recording or the recording is confiscated by a law
30 enforcement agency, whichever occurs first; providing that
31 dissemination of a recording before such knowledge or
32 confiscation does not affect such a time period; amending
33 s. 794.052, F.S.; requiring a law enforcement officer to
34 provide or arrange for transportation of a victim of sexual
35 battery to an appropriate facility for medical treatment or
36 forensic examination; providing for a review of a police
37 officer's final report by a victim and an opportunity for a
38 statement by a victim; amending ss. 794.056 and 938.085,
39 F.S.; requiring that an additional court cost or surcharge
40 be assessed against a defendant who pleads guilty or nolo
41 contendere to, or is found guilty of, regardless of
42 adjudication, certain criminal offenses; providing for
43 proceeds of the additional court cost or surcharge to be
44 deposited into the Rape Crisis Program Trust Fund;
45 reenacting s. 20.435(21)(a), F.S., relating to the Rape
46 Crisis Program Trust Fund, to incorporate the amendment
47 made to s. 794.056, F.S., in a reference thereto;
48 reenacting s. 794.055(3)(b), F.S., relating to access to
49 services for victims of sexual battery, to incorporate the
50 amendment made to s. 938.085, F.S., in a reference thereto;
51 amending s. 960.003, F.S.; providing for hepatitis testing
52 of persons charged with certain offenses; amending s.
53 1003.42, F.S.; requiring that public schools provide
54 comprehensive health education that addresses concepts of
55 Internet safety; providing an effective date.
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Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Walk in Their Shoes Act."

Section 2. Subsection (2) of section 90.404, Florida Statutes, is amended to read:

90.404 Character evidence; when admissible.—

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

(b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "child molestation" means conduct proscribed by s. 787.025(2)(c), s. 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s. 796.035, s. 796.045, s. 800.04, s. 827.071, or s. 847.0135(5), s. 847.0145, or s. 985.701(1) when committed against a person 16 years of age or younger.

(c)1. In a criminal case in which the defendant is charged with a sexual offense, evidence of the defendant's commission of other crimes, wrongs, or acts involving a sexual offense is

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admissible and may be considered for its bearing on any matter to which it is relevant.

2. For the purposes of this paragraph, the term "sexual offense" means conduct proscribed by s. 787.025(2)(c), s. 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s. 796.035, s. 796.045, s. 825.1025(2)(b), s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

~~(d)-(e)~~1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a), ~~or~~ paragraph (b), or paragraph (c), no fewer than 10 days before trial, the state shall furnish to the defendant or to the defendant's counsel a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information. No notice is required for evidence of offenses used for impeachment or on rebuttal.

2. When the evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received and is to be considered. After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.

Section 3. Subsection (4) is added to section 92.55, Florida Statutes, to read:

92.55 Judicial or other proceedings involving victim or witness under the age of 16 or person with mental retardation; special protections; use of registered service or therapy animals.—

113 (4) The court may set any other conditions it finds just
114 and appropriate on the taking of testimony by a child, including
115 the use of a service or therapy animal that has been evaluated
116 and registered according to national standards, in any
117 proceeding involving a sexual offense. When deciding whether to
118 permit a child to testify with the assistance of a registered
119 service or therapy animal, the court shall take into
120 consideration the age of the child, the interests of the child,
121 the rights of the parties to the litigation, and any other
122 relevant factor that would facilitate the testimony by the
123 child.

124 Section 4. Prohibition on reproduction of child
125 pornography.—

126 (1) In a criminal proceeding, any property or material
127 that portrays sexual performance by a child as defined in s.
128 827.071, Florida Statutes, or constitutes child pornography as
129 defined in s. 847.001, Florida Statutes, must remain secured or
130 locked in the care, custody, and control of a law enforcement
131 agency, the state attorney, or the court.

132 (2) Notwithstanding any law or rule of court, a court
133 shall deny, in a criminal proceeding, any request by the
134 defendant to copy, photograph, duplicate, or otherwise reproduce
135 any property or material that portrays sexual performance by a
136 child or constitutes child pornography so long as the state
137 attorney makes the property or material reasonably available to
138 the defendant.

139 (3) For purposes of this section, property or material is
140 deemed to be reasonably available to the defendant if the state

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141 attorney provides ample opportunity at a designated facility for
142 the inspection, viewing, and examination of the property or
143 material that portrays sexual performance by a child or
144 constitutes child pornography by the defendant, his or her
145 attorney, or any individual whom the defendant uses as an expert
146 during the discovery process or at a court proceeding.

147 Section 5. Subsection (2) of section 395.1021, Florida
148 Statutes, is amended to read:

149 395.1021 Treatment of sexual assault victims.—Any licensed
150 facility which provides emergency room services shall arrange
151 for the rendering of appropriate medical attention and treatment
152 of victims of sexual assault through:

153 (2) ~~The administration of medical examinations, tests, and~~
154 ~~analyses required by law enforcement personnel in the gathering~~
155 ~~of forensic medical evidence required for investigation and~~
156 ~~prosecution from a victim who has reported a sexual battery to a~~
157 ~~law enforcement agency or who requests that such evidence be~~
158 ~~gathered for a possible future report.~~

159
160 Such licensed facility shall also arrange for the protection of
161 the victim's anonymity while complying with the laws of this
162 state and may encourage the victim to notify law enforcement
163 personnel and to cooperate with them in apprehending the
164 suspect.

165 Section 6. Subsection (17) is added to section 775.15,
166 Florida Statutes, to read:

167 775.15 Time limitations; general time limitations;
168 exceptions.—

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169 (17) In addition to the time periods prescribed in this
170 section, a prosecution for video voyeurism in violation of s.
171 810.145 may be commenced within 1 year after the date on which
172 the victim of video voyeurism obtains actual knowledge of the
173 existence of such a recording or the date on which the recording
174 is confiscated by a law enforcement agency, whichever occurs
175 first. Any dissemination of such a recording before the victim
176 obtains actual knowledge thereof or before its confiscation by a
177 law enforcement agency does not affect any provision of this
178 subsection.

179 Section 7. Subsection (1) of section 794.052, Florida
180 Statutes, is amended to read:

181 794.052 Sexual battery; notification of victim's rights
182 and services.—

183 (1) A law enforcement officer who investigates an alleged
184 sexual battery shall:

185 (a) Assist the victim in obtaining medical treatment, if
186 medical treatment is necessary as a result of the alleged
187 incident, a forensic examination, and advocacy and crisis-
188 intervention services from a certified rape crisis center and
189 provide or arrange for transportation to the appropriate
190 facility.

191 (b) Advise the victim that he or she may contact a
192 certified rape crisis center from which the victim may receive
193 services.

194 (c) Prior to submitting a final report, permit the victim
195 to review the final report and provide a statement as to the
196 accuracy of the final report.

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197 Section 8. Section 794.056, Florida Statutes, is amended
198 to read:

199 794.056 Rape Crisis Program Trust Fund.—

200 (1) The Rape Crisis Program Trust Fund is created within
201 the Department of Health for the purpose of providing funds for
202 rape crisis centers in this state. Trust fund moneys shall be
203 used exclusively for the purpose of providing services for
204 victims of sexual assault. Funds credited to the trust fund
205 consist of those funds collected as an additional court
206 assessment in each case in which a defendant pleads guilty or
207 nolo contendere to, or is found guilty of, regardless of
208 adjudication, an offense provided ~~defined~~ in s. 775.21(6) and
209 (10)(a), (b), and (g), s. 784.011, s. 784.021, s. 784.03, s.
210 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s.
211 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.01(3), s.
212 787.02(3), s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s.
213 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045,
214 s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s.
215 800.04, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s.
216 825.102, s. 825.1025, s. 827.071, s. 836.10, s. 847.0133, s.
217 847.0135(2), s. 847.0137, s. 847.0145, s. 943.0435(4)(c), (7),
218 (8), (9)(a), (13), and (14)(c), or s. 985.701(1). Funds credited
219 to the trust fund also shall include revenues provided by law,
220 moneys appropriated by the Legislature, and grants from public
221 or private entities.

222 (2) The Department of Health shall establish by rule
223 criteria consistent with the provisions of s. 794.055(3)(a) for
224 distributing moneys from the trust fund to rape crisis centers.

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Section 9. Section 938.085, Florida Statutes, is amended to read:

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g), s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.01(3), s. 787.02(3), 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s. 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s. 800.04, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s. 825.102, s. 825.1025, s. 827.071, s. 836.10, s. 847.0133, s. 847.0135(2), s. 847.0137, s. 847.0145, s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c), or s. 985.701(1), the court shall impose a surcharge of \$151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of \$150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain \$1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 10. For the purpose of incorporating the amendment made by this act to section 794.056, Florida Statutes, in a reference thereto, paragraph (a) of subsection (21) of section 20.435, Florida Statutes, is reenacted to read:

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253 20.435 Department of Health; trust funds.—The following
254 trust funds shall be administered by the Department of Health:

255 (21) Rape Crisis Program Trust Fund.

256 (a) Funds to be credited to and uses of the trust fund
257 shall be administered in accordance with the provisions of s.
258 794.056.

259 Section 11. For the purpose of incorporating the amendment
260 made by this act to section 938.085, Florida Statutes, in a
261 reference thereto, paragraph (b) of subsection (3) of section
262 794.055, Florida Statutes, is reenacted to read:

263 794.055 Access to services for victims of sexual battery.—

264 (3)

265 (b) Funds received under s. 938.085 shall be used to
266 provide sexual battery recovery services to victims and their
267 families. Funds shall be distributed to rape crisis centers
268 based on an allocation formula that takes into account the
269 population and rural characteristics of each county. No more
270 than 15 percent of the funds shall be used by the statewide
271 nonprofit association for statewide initiatives. No more than 5
272 percent of the funds may be used by the department for
273 administrative costs.

274 Section 12. Section 960.003, Florida Statutes, is amended
275 to read:

276 960.003 Hepatitis and HIV testing for persons charged with
277 or alleged by petition for delinquency to have committed certain
278 offenses; disclosure of results to victims.—

279 (1) LEGISLATIVE INTENT.—The Legislature finds that a
280 victim of a criminal offense which involves the transmission of

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body fluids, or which involves certain sexual offenses in which the victim is a minor, disabled adult, or elderly person, is entitled to know at the earliest possible opportunity whether the person charged with or alleged by petition for delinquency to have committed the offense has tested positive for hepatitis or human immunodeficiency virus (HIV) infection. The Legislature finds that to deny victims access to hepatitis and HIV test results causes unnecessary mental anguish in persons who have already suffered trauma. The Legislature further finds that since medical science now recognizes that early diagnosis is a critical factor in the treatment of hepatitis and HIV infection, both the victim and the person charged with or alleged by petition for delinquency to have committed the offense benefit from prompt disclosure of hepatitis and HIV test results.

(2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—

(a) In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after ~~of~~ the information, indictment, or petition for delinquency is filed ~~court order~~. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian requests hepatitis and HIV testing after 48 hours have elapsed

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309 from the filing of the indictment, information, or petition for
310 delinquency, the testing shall be done within 48 hours after the
311 request.

312 (b) However, when a victim of any sexual offense
313 enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at
314 the time the offense was committed or when a victim of any
315 sexual offense enumerated in s. 775.0877(1)(a)-(n) or s.
316 825.1025 is a disabled adult or elderly person as defined in s.
317 825.1025 regardless of whether the offense involves the
318 transmission of bodily fluids from one person to another, then
319 upon the request of the victim or the victim's legal guardian,
320 or of the parent or legal guardian, the court shall order such
321 person to undergo hepatitis and HIV testing within 48 hours
322 after ~~of~~ the information, indictment, or petition for
323 delinquency is filed ~~court order~~. In the event the victim or, if
324 the victim is a minor, the victim's parent or legal guardian
325 requests hepatitis and HIV testing after 48 hours have elapsed
326 from the filing of the indictment, information, or petition for
327 delinquency, the testing shall be done within 48 hours after the
328 request. The testing shall be performed under the direction of
329 the Department of Health in accordance with s. 381.004. The
330 results of a hepatitis and ~~an~~ HIV test performed on a defendant
331 or juvenile offender pursuant to this subsection shall not be
332 admissible in any criminal or juvenile proceeding arising out of
333 the alleged offense.

334 (c) If medically appropriate, followup HIV testing shall
335 be provided when testing has been ordered under paragraph (a) or
336 paragraph (b). The medical propriety of followup HIV testing

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337 shall be based upon a determination by a physician and does not
338 require an additional court order. Notification to the victim,
339 or to the victim's parent or legal guardian, and to the
340 defendant of the results of each followup test shall made be as
341 soon as practicable in accordance with this section.

342 (3) DISCLOSURE OF RESULTS.—

343 (a) The results of the test shall be disclosed no later
344 than 2 weeks after the court receives such results, under the
345 direction of the Department of Health, to the person charged
346 with or alleged by petition for delinquency to have committed or
347 to the person convicted of or adjudicated delinquent for any
348 offense enumerated in s. 775.0877(1)(a)-(n), which involves the
349 transmission of body fluids from one person to another, and,
350 upon request, to the victim or the victim's legal guardian, or
351 the parent or legal guardian of the victim if the victim is a
352 minor, and to public health agencies pursuant to s. 775.0877. If
353 the alleged offender is a juvenile, the test results shall also
354 be disclosed to the parent or guardian. When the victim is a
355 victim as described in paragraph (2)(b), the test results must
356 also be disclosed no later than 2 weeks after the court receives
357 such results, to the person charged with or alleged by petition
358 for delinquency to have committed or to the person convicted of
359 or adjudicated delinquent for any offense enumerated in s.
360 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the
361 offense involves the transmission of bodily fluids from one
362 person to another, and, upon request, to the victim or the
363 victim's legal guardian, or the parent or legal guardian of the
364 victim, and to public health agencies pursuant to s. 775.0877.

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Otherwise, hepatitis and HIV test results obtained pursuant to this section are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to any other person except as expressly authorized by law or court order.

(b) At the time that the results are disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of a victim if the victim is a minor, the same immediate opportunity for face-to-face counseling which must be made available under s. 381.004 to those who undergo hepatitis and HIV testing shall also be afforded to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor.

(4) POSTCONVICTION TESTING.—If, for any reason, the testing requested under subsection (2) has not been undertaken, then upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order the offender to undergo hepatitis and HIV testing following conviction or delinquency adjudication. The testing shall be performed under the direction of the Department of Health, and the results shall be disclosed in accordance with the provisions of subsection (3).

(5) EXCEPTIONS.—~~The provisions of~~ Subsections (2) and (4) do not apply if:

(a) The person charged with or convicted of or alleged by petition for delinquency to have committed or been adjudicated delinquent for an offense described in subsection (2) has undergone hepatitis and HIV testing voluntarily or pursuant to

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procedures established in s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or rule providing for hepatitis and HIV testing of criminal defendants, inmates, or juvenile offenders, subsequent to his or her arrest, conviction, or delinquency adjudication for the offense for which he or she was charged or alleged by petition for delinquency to have committed; and

(b) The results of such hepatitis and HIV testing have been furnished to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor.

(6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT; DISCLOSURE.—In any case in which a person convicted of or adjudicated delinquent for an offense described in subsection (2) has not been tested under subsection (2), but undergoes hepatitis and HIV testing during his or her incarceration, detention, or placement, the results of the initial hepatitis and HIV testing shall be disclosed in accordance with ~~the provisions of~~ subsection (3). Except as otherwise requested by the victim or the victim's legal guardian, or the parent or guardian of the victim if the victim is a minor, if the initial test is conducted within the first year of the imprisonment, detention, or placement, the request for disclosure shall be considered a standing request for any subsequent hepatitis and HIV test results obtained within 1 year after the initial hepatitis and HIV test are performed, and need not be repeated for each test administration. Where the inmate or juvenile offender has previously been tested pursuant to subsection (2) the request for disclosure under this subsection shall be

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421 considered a standing request for subsequent hepatitis and HIV
422 results conducted within 1 year of the test performed pursuant
423 to subsection (2). If the hepatitis and HIV testing is performed
424 by an agency other than the Department of Health, that agency
425 shall be responsible for forwarding the test results to the
426 Department of Health for disclosure in accordance with the
427 provisions of subsection (3). This subsection shall not be
428 limited to results of hepatitis and HIV tests administered
429 subsequent to June 27, 1990, but shall also apply to the results
430 of all hepatitis and HIV tests performed on inmates convicted of
431 or juvenile offenders adjudicated delinquent for sex offenses as
432 described in subsection (2) during their incarceration,
433 detention, or placement prior to June 27, 1990.

434 Section 13. Paragraph (n) of subsection (2) of section
435 1003.42, Florida Statutes, is amended to read:

436 1003.42 Required instruction.—

437 (2) Members of the instructional staff of the public
438 schools, subject to the rules of the State Board of Education
439 and the district school board, shall teach efficiently and
440 faithfully, using the books and materials required that meet the
441 highest standards for professionalism and historic accuracy,
442 following the prescribed courses of study, and employing
443 approved methods of instruction, the following:

444 (n) Comprehensive health education that addresses concepts
445 of community health; consumer health; environmental health;
446 family life, including an awareness of the benefits of sexual
447 abstinence as the expected standard and the consequences of
448 teenage pregnancy; mental and emotional health; injury

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449 prevention and safety; Internet safety; nutrition; personal
450 health; prevention and control of disease; and substance use and
451 abuse. The health education curriculum for students in grades 7
452 through 12 shall include a teen dating violence and abuse
453 component that includes, but is not limited to, the definition
454 of dating violence and abuse, the warning signs of dating
455 violence and abusive behavior, the characteristics of healthy
456 relationships, measures to prevent and stop dating violence and
457 abuse, and community resources available to victims of dating
458 violence and abuse.

459
460 The State Board of Education is encouraged to adopt standards
461 and pursue assessment of the requirements of this subsection.

462 Section 14. This act shall take effect July 1, 2011.