

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

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

827.071, F.S.; defining the term "intentionally view"; prohibiting controlling or intentionally viewing any photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation that includes sexual conduct by a child; providing an exception; providing penalties; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made to s. 827.071, F.S., by the act; providing effective dates.

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

85 molestation is admissible~~7~~ and may be considered for its bearing
86 on any matter to which it is relevant.

87 2. For the purposes of this paragraph, the term "child
88 molestation" means conduct proscribed by s. 787.025(2)(c), s.
89 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s.
90 796.035, s. 796.045, s. 800.04, s. 827.071, ~~or~~ s. 847.0135(5),
91 s. 847.0145, or s. 985.701(1) when committed against a person 16
92 years of age or younger.

93 (c)1. In a criminal case in which the defendant is charged
94 with a sexual offense, evidence of the defendant's commission of
95 other crimes, wrongs, or acts involving a sexual offense is
96 admissible and may be considered for its bearing on any matter
97 to which it is relevant.

98 2. For the purposes of this paragraph, the term "sexual
99 offense" means conduct proscribed by s. 787.025(2)(c), s.
100 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s.
101 796.035, s. 796.045, s. 825.1025(2)(b), s. 827.071, s.
102 847.0135(5), s. 847.0145, or s. 985.701(1).

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

111 2. When the evidence is admitted, the court shall, if
112 requested, charge the jury on the limited purpose for which the

113 evidence is received and is to be considered. After the close of
114 the evidence, the jury shall be instructed on the limited
115 purpose for which the evidence was received and that the
116 defendant cannot be convicted for a charge not included in the
117 indictment or information.

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

120 92.55 Judicial or other proceedings involving victim or
121 witness under the age of 16 or person with mental retardation;
122 special protections; use of registered service or therapy
123 animals.—

124 (4) The court may set any other conditions it finds just
125 and appropriate on the taking of testimony by a child, including
126 the use of a service or therapy animal that has been evaluated
127 and registered according to national standards, in any
128 proceeding involving a sexual offense. When deciding whether to
129 permit a child to testify with the assistance of a registered
130 service or therapy animal, the court shall take into
131 consideration the age of the child, the interests of the child,
132 the rights of the parties to the litigation, and any other
133 relevant factor that would facilitate the testimony by the
134 child.

135 Section 4. Prohibition on reproduction of child
136 pornography.—

137 (1) In a criminal proceeding, any property or material
138 that portrays sexual performance by a child as defined in s.
139 827.071, Florida Statutes, or constitutes child pornography as
140 defined in s. 847.001, Florida Statutes, must remain secured or

141 locked in the care, custody, and control of a law enforcement
142 agency, the state attorney, or the court.

143 (2) Notwithstanding any law or rule of court, a court
144 shall deny, in a criminal proceeding, any request by the
145 defendant to copy, photograph, duplicate, or otherwise reproduce
146 any property or material that portrays sexual performance by a
147 child or constitutes child pornography so long as the state
148 attorney makes the property or material reasonably available to
149 the defendant.

150 (3) For purposes of this section, property or material is
151 deemed to be reasonably available to the defendant if the state
152 attorney provides ample opportunity at a designated facility for
153 the inspection, viewing, and examination of the property or
154 material that portrays sexual performance by a child or
155 constitutes child pornography by the defendant, his or her
156 attorney, or any individual whom the defendant uses as an expert
157 during the discovery process or at a court proceeding.

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

160 395.1021 Treatment of sexual assault victims.—Any licensed
161 facility which provides emergency room services shall arrange
162 for the rendering of appropriate medical attention and treatment
163 of victims of sexual assault through:

164 (2) ~~The administration of medical examinations, tests, and~~
165 ~~analyses required by law enforcement personnel in the gathering~~
166 of forensic medical evidence required for investigation and
167 prosecution from a victim who has reported a sexual battery to a
168 law enforcement agency or who requests that such evidence be

169 gathered for a possible future report.

170
171 Such licensed facility shall also arrange for the protection of
172 the victim's anonymity while complying with the laws of this
173 state and may encourage the victim to notify law enforcement
174 personnel and to cooperate with them in apprehending the
175 suspect.

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

178 775.15 Time limitations; general time limitations;
179 exceptions.—

180 (17) In addition to the time periods prescribed in this
181 section, a prosecution for video voyeurism in violation of s.
182 810.145 may be commenced within 1 year after the date on which
183 the victim of video voyeurism obtains actual knowledge of the
184 existence of such a recording or the date on which the recording
185 is confiscated by a law enforcement agency, whichever occurs
186 first. Any dissemination of such a recording before the victim
187 obtains actual knowledge thereof or before its confiscation by a
188 law enforcement agency does not affect any provision of this
189 subsection.

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

192 794.052 Sexual battery; notification of victim's rights
193 and services.—

194 (1) A law enforcement officer who investigates an alleged
195 sexual battery shall:

196 (a) Assist the victim in obtaining medical treatment, if

197 medical treatment is necessary as a result of the alleged
198 incident, a forensic examination, and advocacy and crisis-
199 intervention services from a certified rape crisis center and
200 provide or arrange for transportation to the appropriate
201 facility.

202 (b) Advise the victim that he or she may contact a
203 certified rape crisis center from which the victim may receive
204 services.

205 (c) Prior to submitting a final report, permit the victim
206 to review the final report and provide a statement as to the
207 accuracy of the final report.

208 Section 8. Section 794.056, Florida Statutes, is amended
209 to read:

210 794.056 Rape Crisis Program Trust Fund.—

211 (1) The Rape Crisis Program Trust Fund is created within
212 the Department of Health for the purpose of providing funds for
213 rape crisis centers in this state. Trust fund moneys shall be
214 used exclusively for the purpose of providing services for
215 victims of sexual assault. Funds credited to the trust fund
216 consist of those funds collected as an additional court
217 assessment in each case in which a defendant pleads guilty or
218 nolo contendere to, or is found guilty of, regardless of
219 adjudication, an offense provided ~~defined~~ in s. 775.21(6) and
220 (10)(a), (b), and (g), s. 784.011, s. 784.021, s. 784.03, s.
221 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s.
222 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.01(3), s.
223 787.02(3), s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s.
224 794.05, 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). Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

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

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

253 probation, community control, or any other court-ordered
254 supervision. The sum of \$150 of the surcharge shall be deposited
255 into the Rape Crisis Program Trust Fund established within the
256 Department of Health by chapter 2003-140, Laws of Florida. The
257 clerk of the court shall retain \$1 of each surcharge that the
258 clerk of the court collects as a service charge of the clerk's
259 office.

260 Section 10. For the purpose of incorporating the amendment
261 made by this act to section 794.056, Florida Statutes, in a
262 reference thereto, paragraph (a) of subsection (21) of section
263 20.435, Florida Statutes, is reenacted to read:

264 20.435 Department of Health; trust funds.—The following
265 trust funds shall be administered by the Department of Health:

266 (21) Rape Crisis Program Trust Fund.

267 (a) Funds to be credited to and uses of the trust fund
268 shall be administered in accordance with the provisions of s.
269 794.056.

270 Section 11. For the purpose of incorporating the amendment
271 made by this act to section 938.085, Florida Statutes, in a
272 reference thereto, paragraph (b) of subsection (3) of section
273 794.055, Florida Statutes, is reenacted to read:

274 794.055 Access to services for victims of sexual battery.—

275 (3)

276 (b) Funds received under s. 938.085 shall be used to
277 provide sexual battery recovery services to victims and their
278 families. Funds shall be distributed to rape crisis centers
279 based on an allocation formula that takes into account the
280 population and rural characteristics of each county. No more

281 than 15 percent of the funds shall be used by the statewide
282 nonprofit association for statewide initiatives. No more than 5
283 percent of the funds may be used by the department for
284 administrative costs.

285 Section 12. Section 960.003, Florida Statutes, is amended
286 to read:

287 960.003 Hepatitis and HIV testing for persons charged with
288 or alleged by petition for delinquency to have committed certain
289 offenses; disclosure of results to victims.—

290 (1) LEGISLATIVE INTENT.—The Legislature finds that a
291 victim of a criminal offense which involves the transmission of
292 body fluids, or which involves certain sexual offenses in which
293 the victim is a minor, disabled adult, or elderly person, is
294 entitled to know at the earliest possible opportunity whether
295 the person charged with or alleged by petition for delinquency
296 to have committed the offense has tested positive for hepatitis
297 or human immunodeficiency virus (HIV) infection. The Legislature
298 finds that to deny victims access to hepatitis and HIV test
299 results causes unnecessary mental anguish in persons who have
300 already suffered trauma. The Legislature further finds that
301 since medical science now recognizes that early diagnosis is a
302 critical factor in the treatment of hepatitis and HIV infection,
303 both the victim and the person charged with or alleged by
304 petition for delinquency to have committed the offense benefit
305 from prompt disclosure of hepatitis and HIV test results.

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

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

(b) However, when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the offense was committed or when a victim of any sexual offense enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled adult or elderly person as defined in s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, then upon the request of the victim or the victim's legal guardian, or of the parent or legal guardian, 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

337 from the filing of the indictment, information, or petition for
338 delinquency, the testing shall be done within 48 hours after the
339 request. The testing shall be performed under the direction of
340 the Department of Health in accordance with s. 381.004. The
341 results of a hepatitis and ~~an~~ HIV test performed on a defendant
342 or juvenile offender pursuant to this subsection shall not be
343 admissible in any criminal or juvenile proceeding arising out of
344 the alleged offense.

345 (c) If medically appropriate, followup HIV testing shall
346 be provided when testing has been ordered under paragraph (a) or
347 paragraph (b). The medical propriety of followup HIV testing
348 shall be based upon a determination by a physician and does not
349 require an additional court order. Notification to the victim,
350 or to the victim's parent or legal guardian, and to the
351 defendant of the results of each followup test shall made be as
352 soon as practicable in accordance with this section.

353 (3) DISCLOSURE OF RESULTS.—

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

365 be disclosed to the parent or guardian. When the victim is a
366 victim as described in paragraph (2)(b), the test results must
367 also be disclosed no later than 2 weeks after the court receives
368 such results, to the person charged with or alleged by petition
369 for delinquency to have committed or to the person convicted of
370 or adjudicated delinquent for any offense enumerated in s.
371 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the
372 offense involves the transmission of bodily fluids from one
373 person to another, and, upon request, to the victim or the
374 victim's legal guardian, or the parent or legal guardian of the
375 victim, and to public health agencies pursuant to s. 775.0877.
376 Otherwise, hepatitis and HIV test results obtained pursuant to
377 this section are confidential and exempt from the provisions of
378 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
379 shall not be disclosed to any other person except as expressly
380 authorized by law or court order.

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

389 (4) POSTCONVICTION TESTING.—If, for any reason, the
390 testing requested under subsection (2) has not been undertaken,
391 then upon request of the victim or the victim's legal guardian,
392 or the parent or legal guardian of the victim if the victim is a

393 minor, the court shall order the offender to undergo hepatitis
394 and HIV testing following conviction or delinquency
395 adjudication. The testing shall be performed under the direction
396 of the Department of Health, and the results shall be disclosed
397 in accordance with the provisions of subsection (3).

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

400 (a) The person charged with or convicted of or alleged by
401 petition for delinquency to have committed or been adjudicated
402 delinquent for an offense described in subsection (2) has
403 undergone hepatitis and HIV testing voluntarily or pursuant to
404 procedures established in s. 381.004(3)(h)6. or s. 951.27, or
405 any other applicable law or rule providing for hepatitis and HIV
406 testing of criminal defendants, inmates, or juvenile offenders,
407 subsequent to his or her arrest, conviction, or delinquency
408 adjudication for the offense for which he or she was charged or
409 alleged by petition for delinquency to have committed; and

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

414 (6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT;
415 DISCLOSURE.—In any case in which a person convicted of or
416 adjudicated delinquent for an offense described in subsection
417 (2) has not been tested under subsection (2), but undergoes
418 hepatitis and HIV testing during his or her incarceration,
419 detention, or placement, the results of the initial hepatitis
420 and HIV testing shall be disclosed in accordance with ~~the~~

421 ~~provisions of~~ subsection (3). Except as otherwise requested by
422 the victim or the victim's legal guardian, or the parent or
423 guardian of the victim if the victim is a minor, if the initial
424 test is conducted within the first year of the imprisonment,
425 detention, or placement, the request for disclosure shall be
426 considered a standing request for any subsequent hepatitis and
427 HIV test results obtained within 1 year after the initial
428 hepatitis and HIV test are performed, and need not be repeated
429 for each test administration. Where the inmate or juvenile
430 offender has previously been tested pursuant to subsection (2)
431 the request for disclosure under this subsection shall be
432 considered a standing request for subsequent hepatitis and HIV
433 results conducted within 1 year of the test performed pursuant
434 to subsection (2). If the hepatitis and HIV testing is performed
435 by an agency other than the Department of Health, that agency
436 shall be responsible for forwarding the test results to the
437 Department of Health for disclosure in accordance with the
438 provisions of subsection (3). This subsection shall not be
439 limited to results of hepatitis and HIV tests administered
440 subsequent to June 27, 1990, but shall also apply to the results
441 of all hepatitis and HIV tests performed on inmates convicted of
442 or juvenile offenders adjudicated delinquent for sex offenses as
443 described in subsection (2) during their incarceration,
444 detention, or placement prior to June 27, 1990.

445 Section 13. Paragraph (n) of subsection (2) of section
446 1003.42, Florida Statutes, is amended to read:

447 1003.42 Required instruction.—

448 (2) Members of the instructional staff of the public

449 schools, subject to the rules of the State Board of Education
450 and the district school board, shall teach efficiently and
451 faithfully, using the books and materials required that meet the
452 highest standards for professionalism and historic accuracy,
453 following the prescribed courses of study, and employing
454 approved methods of instruction, the following:

455 (n) Comprehensive health education that addresses concepts
456 of community health; consumer health; environmental health;
457 family life, including an awareness of the benefits of sexual
458 abstinence as the expected standard and the consequences of
459 teenage pregnancy; mental and emotional health; injury
460 prevention and safety; Internet safety; nutrition; personal
461 health; prevention and control of disease; and substance use and
462 abuse. The health education curriculum for students in grades 7
463 through 12 shall include a teen dating violence and abuse
464 component that includes, but is not limited to, the definition
465 of dating violence and abuse, the warning signs of dating
466 violence and abusive behavior, the characteristics of healthy
467 relationships, measures to prevent and stop dating violence and
468 abuse, and community resources available to victims of dating
469 violence and abuse.

470
471 The State Board of Education is encouraged to adopt standards
472 and pursue assessment of the requirements of this subsection.

473 Section 14. Effective October 1, 2011, subsections (1) and
474 (5) of section 827.071, Florida Statutes, are amended to read:

475 827.071 Sexual performance by a child; penalties.—

476 (1) As used in this section, the following definitions

shall apply:

(a) "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.

(b) "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.

(c)~~(b)~~ "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(d)~~(e)~~ "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

(e)~~(d)~~ "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.

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

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

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

507 (h)~~(g)~~ "Sexual conduct" means actual or simulated sexual
508 intercourse, deviate sexual intercourse, sexual bestiality,
509 masturbation, or sadomasochistic abuse; actual lewd exhibition
510 of the genitals; actual physical contact with a person's clothed
511 or unclothed genitals, pubic area, buttocks, or, if such person
512 is a female, breast, with the intent to arouse or gratify the
513 sexual desire of either party; or any act or conduct which
514 constitutes sexual battery or simulates that sexual battery is
515 being or will be committed. A mother's breastfeeding of her baby
516 does not under any circumstance constitute "sexual conduct."

517 (i)~~(h)~~ "Sexual performance" means any performance or part
518 thereof which includes sexual conduct by a child of less than 18
519 years of age.

520 (j)~~(i)~~ "Simulated" means the explicit depiction of conduct
521 set forth in paragraph (h) ~~(g)~~ which creates the appearance of
522 such conduct and which exhibits any uncovered portion of the
523 breasts, genitals, or buttocks.

524 (5) (a) It is unlawful for any person to knowingly possess,
525 control, or intentionally view a photograph, motion picture,
526 exhibition, show, representation, image, data, computer
527 depiction, or other presentation which, in whole or in part, he
528 or she knows to include any sexual conduct by a child. The
529 possession, control, or intentional viewing of each such
530 photograph, motion picture, exhibition, show, image, data,
531 computer depiction, representation, or presentation is a
532 separate offense. A person who ~~Whoever~~ violates this subsection

~~commits is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

Section 15. Effective October 1, 2011, paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

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550	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
551	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
552	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
553	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
554	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
555	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
556	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.

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557	790.01 (2)	3rd	Carrying a concealed firearm.
558	790.162	2nd	Threat to throw or discharge destructive device.
559	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
560	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
561	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
562	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
563	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
564	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
	812.0145 (2) (b)	2nd	Theft from person 65 years of

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age or older; \$10,000 or more
but less than \$50,000.

812.015(8) 3rd Retail theft; property stolen is
valued at \$300 or more and one
or more specified acts.

812.019(1) 2nd Stolen property; dealing in or
trafficking in.

812.131(2)(b) 3rd Robbery by sudden snatching.

812.16(2) 3rd Owning, operating, or conducting
a chop shop.

817.034(4)(a)2. 2nd Communications fraud, value
\$20,000 to \$50,000.

817.234(11)(b) 2nd Insurance fraud; property value
\$20,000 or more but less than
\$100,000.

817.2341(1), (2)(a) 3rd Filing false financial
& (3)(a) statements, making false
entries of material fact or
false statements regarding
property values relating to the

solvency of an insuring entity.

572

817.568 (2) (b)

2nd

Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.

573

817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

574

825.1025 (4)

3rd

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

575

827.071 (4)

2nd

Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

576

827.071 (5)

3rd

Possess, control, or

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

577

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.

578

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

579

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

580

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

581

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

582

874.05 (2) 2nd Encouraging or recruiting

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

893.13(1)(a)1. 2nd Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)4.
drugs).

893.13(1)(c)2. 2nd Sell, manufacture, or deliver
cannabis (or other s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs)
within 1,000 feet of a child
care facility, school, or state,
county, or municipal park or
publicly owned recreational
facility or community center.

893.13(1)(d)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
university.

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893.13(1)(e)2. 2nd Sell, manufacture, or deliver
cannabis or other drug
prohibited under s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) within
1,000 feet of property used for
religious services or a
specified business site.

893.13(1)(f)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d), or
(2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
public housing facility.

893.13(4)(b) 2nd Deliver to minor cannabis (or
other s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) drugs).

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

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591 Section 16. Except as otherwise expressly provided in this
592 act, this act shall take effect July 1, 2011.