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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

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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; providing an appropriation to the Department of
55 Legal Affairs for the purpose of funding a nonprofit
56 organization for specified purposes; amending s. 1003.42,

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57 F.S.; requiring that public schools provide comprehensive
58 health education that addresses concepts of Internet
59 safety; amending s. 827.071, F.S.; defining the term
60 "intentionally view"; prohibiting controlling or
61 intentionally viewing any photograph, motion picture,
62 exhibition, show, image, data, computer depiction,
63 representation, or other presentation that includes sexual
64 conduct by a child; providing an exception; providing
65 penalties; amending s. 921.0022, F.S.; conforming
66 provisions of the offense severity ranking chart of the
67 Criminal Punishment Code to changes made to s. 827.071,
68 F.S., by the act; providing effective dates.

69
70 Be It Enacted by the Legislature of the State of Florida:

71
72 Section 1. This act may be cited as the "Walk in Their
73 Shoes Act."

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

76 90.404 Character evidence; when admissible.—

77 (2) OTHER CRIMES, WRONGS, OR ACTS.—

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

84 (b)1. In a criminal case in which the defendant is charged

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85 with a crime involving child molestation, evidence of the
86 defendant's commission of other crimes, wrongs, or acts of child
87 molestation is admissible, and may be considered for its bearing
88 on any matter to which it is relevant.

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

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

100 2. For the purposes of this paragraph, the term "sexual
101 offense" means conduct proscribed by s. 787.025(2)(c), s.
102 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s.
103 796.035, s. 796.045, s. 825.1025(2)(b), s. 827.071, s.
104 847.0135(5), s. 847.0145, or s. 985.701(1).

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

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

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

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

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

137 Section 4. Prohibition on reproduction of child
138 pornography.—

139 (1) In a criminal proceeding, any property or material
140 that portrays sexual performance by a child as defined in s.

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141 827.071, Florida Statutes, or constitutes child pornography as
142 defined in s. 847.001, Florida Statutes, must remain secured or
143 locked in the care, custody, and control of a law enforcement
144 agency, the state attorney, or the court.

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

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

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

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

166 (2) ~~The administration of medical examinations, tests, and~~
167 ~~analyses required by law enforcement personnel in the gathering~~
168 ~~of forensic medical evidence required for investigation and~~

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prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report.

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

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

775.15 Time limitations; general time limitations; exceptions.—

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

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

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

(1) A law enforcement officer who investigates an alleged

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sexual battery shall:

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

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

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

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

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided ~~defined~~ in 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.

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787.02(3), s. 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). 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

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253 (14) (c), or s. 985.701(1), the court shall impose a surcharge of
254 \$151. Payment of the surcharge shall be a condition of
255 probation, community control, or any other court-ordered
256 supervision. The sum of \$150 of the surcharge shall be deposited
257 into the Rape Crisis Program Trust Fund established within the
258 Department of Health by chapter 2003-140, Laws of Florida. The
259 clerk of the court shall retain \$1 of each surcharge that the
260 clerk of the court collects as a service charge of the clerk's
261 office.

262 Section 10. For the purpose of incorporating the amendment
263 made by this act to section 794.056, Florida Statutes, in a
264 reference thereto, paragraph (a) of subsection (21) of section
265 20.435, Florida Statutes, is reenacted to read:

266 20.435 Department of Health; trust funds.—The following
267 trust funds shall be administered by the Department of Health:

268 (21) Rape Crisis Program Trust Fund.

269 (a) Funds to be credited to and uses of the trust fund
270 shall be administered in accordance with the provisions of s.
271 794.056.

272 Section 11. For the purpose of incorporating the amendment
273 made by this act to section 938.085, Florida Statutes, in a
274 reference thereto, paragraph (b) of subsection (3) of section
275 794.055, Florida Statutes, is reenacted to read:

276 794.055 Access to services for victims of sexual battery.—

277 (3)

278 (b) Funds received under s. 938.085 shall be used to
279 provide sexual battery recovery services to victims and their
280 families. Funds shall be distributed to rape crisis centers

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281 based on an allocation formula that takes into account the
282 population and rural characteristics of each county. No more
283 than 15 percent of the funds shall be used by the statewide
284 nonprofit association for statewide initiatives. No more than 5
285 percent of the funds may be used by the department for
286 administrative costs.

287 Section 12. Section 960.003, Florida Statutes, is amended
288 to read:

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

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

308 (2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION

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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 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

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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. The testing shall be performed under the direction of the Department of Health in accordance with s. 381.004. The results of a hepatitis and ~~an~~ HIV test performed on a defendant or juvenile offender pursuant to this subsection shall not be admissible in any criminal or juvenile proceeding arising out of the alleged offense.

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

(3) DISCLOSURE OF RESULTS.—

(a) The results of the test shall be disclosed no later than 2 weeks after the court receives such results, under the direction of the Department of Health, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a

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

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

391 (4) POSTCONVICTION TESTING.—If, for any reason, the
392 testing requested under subsection (2) has not been undertaken,

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393 then upon request of the victim or the victim's legal guardian,
394 or the parent or legal guardian of the victim if the victim is a
395 minor, the court shall order the offender to undergo hepatitis
396 and HIV testing following conviction or delinquency
397 adjudication. The testing shall be performed under the direction
398 of the Department of Health, and the results shall be disclosed
399 in accordance with the provisions of subsection (3).

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

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

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

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

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

447 Section 13. The sum of \$1.5 million in nonrecurring funds
448 from the General Revenue Fund is appropriated in fiscal year

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2011-2012 to the Department of Legal Affairs for the purpose of funding Lauren's Kids, a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code, tax I.D. number 26-1252588, to educate adults and children about sexual abuse topics through an in-school curriculum and maintain a 24-hour Crisis Hotline.

Section 14. Paragraph (n) of subsection (2) of section 1003.42, Florida Statutes, is amended to read:

1003.42 Required instruction.—

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

(n) Comprehensive health education that addresses concepts of community health; consumer health; environmental health; family life, including an awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy; mental and emotional health; injury prevention and safety; Internet safety; nutrition; personal health; prevention and control of disease; and substance use and abuse. The health education curriculum for students in grades 7 through 12 shall include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy

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relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.

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

Section 15. Effective October 1, 2011, subsections (1) and (5) of section 827.071, Florida Statutes, are amended to read:

827.071 Sexual performance by a child; penalties.—

(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) ~~(c)~~ "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

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505 torture by or upon a person, or the condition of being fettered,
506 bound, or otherwise physically restrained, for the purpose of
507 deriving sexual satisfaction from inflicting harm on another or
508 receiving such harm oneself.

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

514 (g)~~(f)~~ "Sexual bestiality" means any sexual act between a
515 person and an animal involving the sex organ of the one and the
516 mouth, anus, or vagina of the other.

517 (h)~~(g)~~ "Sexual conduct" means actual or simulated sexual
518 intercourse, deviate sexual intercourse, sexual bestiality,
519 masturbation, or sadomasochistic abuse; actual lewd exhibition
520 of the genitals; actual physical contact with a person's clothed
521 or unclothed genitals, pubic area, buttocks, or, if such person
522 is a female, breast, with the intent to arouse or gratify the
523 sexual desire of either party; or any act or conduct which
524 constitutes sexual battery or simulates that sexual battery is
525 being or will be committed. A mother's breastfeeding of her baby
526 does not under any circumstance constitute "sexual conduct."

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

530 (j)~~(i)~~ "Simulated" means the explicit depiction of conduct
531 set forth in paragraph (h) ~~(g)~~ which creates the appearance of
532 such conduct and which exhibits any uncovered portion of the

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breasts, genitals, or buttocks.

(5) (a) It is unlawful for any person to knowingly 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 any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a 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 16. 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

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injuries, failure to stop;
leaving scene.

557

316.1935 (4) (a) 2nd Aggravated fleeing or eluding.

558

322.34 (6) 3rd Careless operation of motor
vehicle with suspended license,
resulting in death or serious
bodily injury.

559

327.30 (5) 3rd Vessel accidents involving
personal injury; leaving scene.

560

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

561

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

562

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

563

440.381 (2) 2nd Submission of false, misleading,
or incomplete information with
the purpose of avoiding or
reducing workers' compensation

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premiums.

564

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

565

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

566

790.01 (2) 3rd Carrying a concealed firearm.

567

790.162 2nd Threat to throw or discharge
destructive device.

568

790.163 (1) 2nd False report of deadly explosive
or weapon of mass destruction.

569

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

570

790.23 2nd Felons in possession of
firearms, ammunition, or
electronic weapons or devices.

571

800.04 (6) (c) 3rd Lewd or lascivious conduct;
offender less than 18 years.

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573	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
574	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
575	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
576	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
577	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
578	812.131 (2) (b)	3rd	Robbery by sudden snatching.
579	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
580	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.

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581	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
582	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
583	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.
584	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly

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person or disabled adult.

585

827.071(4)

2nd

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

586

827.071(5)

3rd

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

587

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.

588

843.01

3rd

Resist officer with violence to person; resist arrest with violence.

589

847.0135(5)(b)

2nd

Lewd or lascivious exhibition using computer; offender 18 years or older.

590

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591	847.0137(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
592	847.0138(2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
593	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
594	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

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facility or community center.

595

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.

596

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.

597

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.

598

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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.

Section 17. Except as otherwise expressly provided in this
act, this act shall take effect July 1, 2011.