

By the Committee on Criminal Justice; and Senator Fasano

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

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30 whichever occurs first; providing that dissemination
31 of a recording before such knowledge or confiscation
32 does not affect such a time period; amending s.
33 794.052, F.S.; requiring a law enforcement officer to
34 provide or arrange for transportation of a victim of
35 sexual battery to an appropriate facility for medical
36 treatment or forensic examination; providing for a
37 review of a police officer's final report by a victim
38 and an opportunity for a statement by a victim;
39 amending ss. 794.056 and 938.085, F.S.; requiring that
40 an additional court cost or surcharge be assessed
41 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
45 be deposited into the Rape Crisis Program Trust Fund;
46 reenacting s. 20.435(21)(a), F.S., relating to the
47 Rape Crisis Program Trust Fund, to incorporate the
48 amendment made to s. 794.056, F.S., in a reference
49 thereto; reenacting s. 794.055(3)(b), F.S., relating
50 to access to services for victims of sexual battery,
51 to incorporate the amendment made to s. 938.085, F.S.,
52 in a reference thereto; amending s. 960.003, F.S.;
53 providing for hepatitis testing of persons charged
54 with certain offenses; amending s. 960.198, F.S.;
55 authorizing relocation assistance awards to certain
56 victims of sexual violence; amending s. 1003.42, F.S.;
57 requiring that public schools provide comprehensive
58 health education that addresses concepts of Internet

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safety; providing an effective date.

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

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88 other crimes, wrongs, or acts involving a sexual offense is
89 admissible and may be considered for its bearing on any matter
90 to which it is relevant.

91 2. For the purposes of this paragraph, the term "sexual
92 offense" means conduct proscribed by s. 787.025(2)(c), s.
93 794.011, excluding s. 794.011(10), s. 794.05, s. 796.03, s.
94 796.035, s. 796.045, s. 825.1025(2)(b), s. 827.071, s.
95 847.0135(5), s. 847.0145, or s. 985.701(1).

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

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

111 Section 3. Prohibition on reproduction of child
112 pornography.—

113 (1) In a criminal proceeding, any property or material that
114 portrays sexual performance by a child as defined in s. 827.071,
115 Florida Statutes, or constitutes child pornography as defined in
116 s. 847.001, Florida Statutes, must remain secured or locked in

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117 the care, custody, and control of a law enforcement agency, the
118 state attorney, or the court.

119 (2) Notwithstanding any law or rule of court, a court shall
120 deny, in a criminal proceeding, any request by the defendant to
121 copy, photograph, duplicate, or otherwise reproduce any property
122 or material that portrays sexual performance by a child or
123 constitutes child pornography so long as the state attorney
124 makes the property or material reasonably available to the
125 defendant.

126 (3) For purposes of this section, property or material is
127 deemed to be reasonably available to the defendant if the state
128 attorney provides ample opportunity at a designated facility for
129 the inspection, viewing, and examination of the property or
130 material that portrays sexual performance by a child or
131 constitutes child pornography by the defendant, his or her
132 attorney, or any individual whom the defendant uses as an expert
133 during the discovery process or at a court proceeding.

134 Section 4. Subsection (2) of section 395.1021, Florida
135 Statutes, is amended to read:

136 395.1021 Treatment of sexual assault victims.—Any licensed
137 facility which provides emergency room services shall arrange
138 for the rendering of appropriate medical attention and treatment
139 of victims of sexual assault through:

140 ~~(2) The administration of medical examinations, tests, and~~
141 ~~analyses required by law enforcement personnel in the gathering~~
142 of forensic medical evidence required for investigation and
143 prosecution from a victim who has reported a sexual battery to a
144 law enforcement agency or who requests that such evidence be
145 gathered for a possible future report.

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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 5. 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 6. 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 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-

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175 intervention services from a certified rape crisis center and
176 provide or arrange for transportation to the appropriate
177 facility.

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

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

184 Section 7. Section 794.056, Florida Statutes, is amended to
185 read:

186 794.056 Rape Crisis Program Trust Fund.—

187 (1) The Rape Crisis Program Trust Fund is created within
188 the Department of Health for the purpose of providing funds for
189 rape crisis centers in this state. Trust fund moneys shall be
190 used exclusively for the purpose of providing services for
191 victims of sexual assault. Funds credited to the trust fund
192 consist of those funds collected as an additional court
193 assessment in each case in which a defendant pleads guilty or
194 nolo contendere to, or is found guilty of, regardless of
195 adjudication, an offense provided ~~defined~~ in s. 775.21(6) and
196 (10)(a), (b), and (g), s. 784.011, s. 784.021, s. 784.03, s.
197 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s.
198 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.01(3), s.
199 787.02(3), s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s.
200 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045,
201 s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s.
202 800.04, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s.
203 825.102, s. 825.1025, s. 827.071, s. 836.10, s. 847.0133, s.

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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 8. 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

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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 9. 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:

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

(21) Rape Crisis Program Trust Fund.

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

Section 10. For the purpose of incorporating the amendment made by this act to section 938.085, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 794.055, Florida Statutes, is reenacted to read:

794.055 Access to services for victims of sexual battery.—

(3)

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

Section 11. Section 960.003, Florida Statutes, is amended

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to read:

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

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

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291 such person to undergo hepatitis and HIV testing within 48 hours
292 after ~~of~~ the information or indictment is filed ~~court order~~. In
293 the event the victim or, if the victim is a minor, the victim's
294 parent or legal guardian, requests hepatitis and HIV testing
295 after 48 hours have elapsed from the filing of the indictment or
296 information, the testing shall be done within 48 hours after the
297 request.

298 (b) However, when a victim of any sexual offense enumerated
299 in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the
300 offense was committed or when a victim of any sexual offense
301 enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a disabled
302 adult or elderly person as defined in s. 825.1025 regardless of
303 whether the offense involves the transmission of bodily fluids
304 from one person to another, then upon the request of the victim
305 or the victim's legal guardian, or of the parent or legal
306 guardian, the court shall order such person to undergo hepatitis
307 and HIV testing within 48 hours after ~~of~~ the information or
308 indictment is filed ~~court order~~. In the event the victim or, if
309 the victim is a minor, the victim's parent or legal guardian,
310 requests hepatitis and HIV testing after 48 hours have elapsed
311 from the filing of the indictment or information, the testing
312 shall be done within 48 hours after the request. The testing
313 shall be performed under the direction of the Department of
314 Health in accordance with s. 381.004. The results of a hepatitis
315 and ~~an~~ HIV test performed on a defendant or juvenile offender
316 pursuant to this subsection shall not be admissible in any
317 criminal or juvenile proceeding arising out of the alleged
318 offense.

319 (c) If medically appropriate, followup HIV testing shall be

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

327 (3) DISCLOSURE OF RESULTS.—

328 (a) The results of the test shall be disclosed no later
329 than 2 weeks after the court receives such results, under the
330 direction of the Department of Health, to the person charged
331 with or alleged by petition for delinquency to have committed or
332 to the person convicted of or adjudicated delinquent for any
333 offense enumerated in s. 775.0877(1)(a)-(n), which involves the
334 transmission of body fluids from one person to another, and,
335 upon request, to the victim or the victim's legal guardian, or
336 the parent or legal guardian of the victim if the victim is a
337 minor, and to public health agencies pursuant to s. 775.0877. If
338 the alleged offender is a juvenile, the test results shall also
339 be disclosed to the parent or guardian. When the victim is a
340 victim as described in paragraph (2)(b), the test results must
341 also be disclosed no later than 2 weeks after the court receives
342 such results, to the person charged with or alleged by petition
343 for delinquency to have committed or to the person convicted of
344 or adjudicated delinquent for any offense enumerated in s.
345 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the
346 offense involves the transmission of bodily fluids from one
347 person to another, and, upon request, to the victim or the
348 victim's legal guardian, or the parent or legal guardian of the

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349 victim, and to public health agencies pursuant to s. 775.0877.
350 Otherwise, hepatitis and HIV test results obtained pursuant to
351 this section are confidential and exempt from the provisions of
352 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
353 shall not be disclosed to any other person except as expressly
354 authorized by law or court order.

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

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

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

374 (a) The person charged with or convicted of or alleged by
375 petition for delinquency to have committed or been adjudicated
376 delinquent for an offense described in subsection (2) has
377 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 considered a standing request for subsequent hepatitis and HIV results conducted within 1 year of the test performed pursuant

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to subsection (2). If the hepatitis and HIV testing is performed by an agency other than the Department of Health, that agency shall be responsible for forwarding the test results to the Department of Health for disclosure in accordance with the provisions of subsection (3). This subsection shall not be limited to results of hepatitis and HIV tests administered subsequent to June 27, 1990, but shall also apply to the results of all hepatitis and HIV tests performed on inmates convicted of or juvenile offenders adjudicated delinquent for sex offenses as described in subsection (2) during their incarceration, detention, or placement prior to June 27, 1990.

Section 12. Section 960.198, Florida Statutes, is amended to read:

960.198 Relocation assistance for victims of domestic violence and sexual violence.—

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment or to a victim of sexual violence who reasonably fears for her or his safety.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a domestic violence or sexual violence offense was committed;

(b) The domestic violence or sexual violence offense must be reported to the proper authorities;

(c) The victim's need for assistance must be certified by a

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certified domestic violence center or a certified rape crisis
center in this state; and

(d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

Section 13. 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 relationships, measures to prevent and stop dating violence and

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465 abuse, and community resources available to victims of dating
466 violence and abuse.

467
468 The State Board of Education is encouraged to adopt standards
469 and pursue assessment of the requirements of this subsection.

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