

By Senator Benacquisto

27-00720-12

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1 A bill to be entitled
2 An act relating to protection of minors; providing a
3 short title; amending s. 775.21, F.S.; requiring a
4 person convicted of a second or subsequent violation
5 of a specified video voyeurism provision to register
6 as a sexual offender if the victim of the violation
7 was a minor; amending s. 827.071, F.S.; providing that
8 if more than one child is involved in a violation of
9 provisions prohibiting sexual performance by a child,
10 each child involved in the violation creates a
11 separate offense; amending s. 943.0435, F.S.;
12 requiring a person convicted of a video voyeurism
13 violation to register as a sexual offender if the
14 victim of the violation was a minor; amending s.
15 810.145, F.S.; revising the definition of the term
16 "place and time when a person has a reasonable
17 expectation of privacy" to include the interior of a
18 residential dwelling; increasing the classification of
19 specified video voyeurism offenses involving minors;
20 amending s. 921.0022, F.S.; ranking a violation of s.
21 810.145(8)(b), F.S., above its default value for
22 purposes of the offense severity ranking chart of the
23 Criminal Punishment Code; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. This act may be cited as the "Protect Our
28 Children Act of 2012."

29 Section 2. Paragraph (a) of subsection (4) of section

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30 775.21, Florida Statutes, is amended to read:

31 775.21 The Florida Sexual Predators Act.—

32 (4) SEXUAL PREDATOR CRITERIA.—

33 (a) For a current offense committed on or after October 1,
34 1993, upon conviction, an offender shall be designated as a
35 “sexual predator” under subsection (5), and subject to
36 registration under subsection (6) and community and public
37 notification under subsection (7) if:

38 1. The felony is:

39 a. A capital, life, or first-degree felony violation, or
40 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
41 is a minor and the defendant is not the victim’s parent or
42 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
43 violation of a similar law of another jurisdiction; or

44 b. Any felony violation, or any attempt thereof, of s.
45 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
46 minor and the defendant is not the victim’s parent or guardian;
47 s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
48 796.035; s. 800.04; s. 810.145(8); s. 825.1025(2)(b); s.
49 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a
50 violation of a similar law of another jurisdiction, and the
51 offender has previously been convicted of or found to have
52 committed, or has pled nolo contendere or guilty to, regardless
53 of adjudication, any violation of s. 787.01, s. 787.02, or s.
54 787.025(2)(c), where the victim is a minor and the defendant is
55 not the victim’s parent or guardian; s. 794.011, excluding s.
56 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
57 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
58 excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a

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59 violation of a similar law of another jurisdiction;

60 2. The offender has not received a pardon for any felony or
61 similar law of another jurisdiction that is necessary for the
62 operation of this paragraph; and

63 3. A conviction of a felony or similar law of another
64 jurisdiction necessary to the operation of this paragraph has
65 not been set aside in any postconviction proceeding.

66 Section 3. Paragraph (a) of subsection (5) of section
67 827.071, Florida Statutes, is amended to read:

68 827.071 Sexual performance by a child; penalties.—

69 (5) (a) It is unlawful for any person to knowingly possess,
70 control, or intentionally view a photograph, motion picture,
71 exhibition, show, representation, image, data, computer
72 depiction, or other presentation which, in whole or in part, he
73 or she knows to include any sexual conduct by a child. The
74 possession, control, or intentional viewing of each such
75 photograph, motion picture, exhibition, show, image, data,
76 computer depiction, representation, or presentation is a
77 separate offense. If a photograph, motion picture, exhibition,
78 show, representation, image, data, computer depiction, or other
79 presentation includes sexual conduct by more than one child,
80 then each such child in each such photograph, motion picture,
81 exhibition, show, representation, image, data, computer
82 depiction, or other presentation is a separate offense. A person
83 who violates this subsection commits a felony of the third
84 degree, punishable as provided in s. 775.082, s. 775.083, or s.
85 775.084.

86 Section 4. Paragraph (a) of subsection (1) of section
87 943.0435, Florida Statutes, is amended to read:

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88 943.0435 Sexual offenders required to register with the
89 department; penalty.-

90 (1) As used in this section, the term:

91 (a)1. "Sexual offender" means a person who meets the
92 criteria in sub-subparagraph a., sub-subparagraph b., sub-
93 subparagraph c., or sub-subparagraph d., as follows:

94 a.(I) Has been convicted of committing, or attempting,
95 soliciting, or conspiring to commit, any of the criminal
96 offenses proscribed in the following statutes in this state or
97 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
98 or s. 787.025(2)(c), where the victim is a minor and the
99 defendant is not the victim's parent or guardian; s. 794.011,
100 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
101 800.04; s. 810.145(8)(a); s. 825.1025; s. 827.071; s. 847.0133;
102 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;
103 s. 847.0145; or s. 985.701(1); or any similar offense committed
104 in this state which has been redesignated from a former statute
105 number to one of those listed in this sub-sub-subparagraph; and

106 (II) Has been released on or after October 1, 1997, from
107 the sanction imposed for any conviction of an offense described
108 in sub-sub-subparagraph (I). For purposes of sub-sub-
109 subparagraph (I), a sanction imposed in this state or in any
110 other jurisdiction includes, but is not limited to, a fine,
111 probation, community control, parole, conditional release,
112 control release, or incarceration in a state prison, federal
113 prison, private correctional facility, or local detention
114 facility;

115 b. Establishes or maintains a residence in this state and
116 who has not been designated as a sexual predator by a court of

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117 this state but who has been designated as a sexual predator, as
118 a sexually violent predator, or by another sexual offender
119 designation in another state or jurisdiction and was, as a
120 result of such designation, subjected to registration or
121 community or public notification, or both, or would be if the
122 person were a resident of that state or jurisdiction, without
123 regard to whether the person otherwise meets the criteria for
124 registration as a sexual offender;

125 c. Establishes or maintains a residence in this state who
126 is in the custody or control of, or under the supervision of,
127 any other state or jurisdiction as a result of a conviction for
128 committing, or attempting, soliciting, or conspiring to commit,
129 any of the criminal offenses proscribed in the following
130 statutes or similar offense in another jurisdiction: s. 787.01,
131 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
132 the defendant is not the victim's parent or guardian; s.
133 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
134 796.035; s. 800.04; s. 810.145(8)(a); s. 825.1025; s. 827.071;
135 s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137;
136 s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar
137 offense committed in this state which has been redesignated from
138 a former statute number to one of those listed in this sub-
139 subparagraph; or

140 d. On or after July 1, 2007, has been adjudicated
141 delinquent for committing, or attempting, soliciting, or
142 conspiring to commit, any of the criminal offenses proscribed in
143 the following statutes in this state or similar offenses in
144 another jurisdiction when the juvenile was 14 years of age or
145 older at the time of the offense:

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146 (I) Section 794.011, excluding s. 794.011(10);
147 (II) Section 800.04(4)(b) where the victim is under 12
148 years of age or where the court finds sexual activity by the use
149 of force or coercion;
150 (III) Section 800.04(5)(c)1. where the court finds
151 molestation involving unclothed genitals; or
152 (IV) Section 800.04(5)(d) where the court finds the use of
153 force or coercion and unclothed genitals.
154 2. For all qualifying offenses listed in sub-subparagraph
155 (1)(a)1.d., the court shall make a written finding of the age of
156 the offender at the time of the offense.
157
158 For each violation of a qualifying offense listed in this
159 subsection, the court shall make a written finding of the age of
160 the victim at the time of the offense. For a violation of s.
161 800.04(4), the court shall additionally make a written finding
162 indicating that the offense did or did not involve sexual
163 activity and indicating that the offense did or did not involve
164 force or coercion. For a violation of s. 800.04(5), the court
165 shall additionally make a written finding that the offense did
166 or did not involve unclothed genitals or genital area and that
167 the offense did or did not involve the use of force or coercion.
168 Section 5. Paragraph (c) of subsection (1) and subsection
169 (8) of section 810.145, Florida Statutes, are amended to read:
170 810.145 Video voyeurism.—
171 (1) As used in this section, the term:
172 (c) "Place and time when a person has a reasonable
173 expectation of privacy" means a place and time when a reasonable
174 person would believe that he or she could fully disrobe in

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175 privacy, without being concerned that the person's undressing
176 was being viewed, recorded, or broadcasted by another,
177 including, but not limited to, the interior of a residential
178 dwelling, bathroom, changing room, fitting room, dressing room,
179 or tanning booth.

180 (8) (a) A person who is:

181 1. Eighteen years of age or older who is responsible for
182 the welfare of a child younger than 16 years of age, regardless
183 of whether the person knows or has reason to know the age of the
184 child, and who commits an offense under this section against
185 that child;

186 2. Eighteen years of age or older who is employed at a
187 private school as defined in s. 1002.01; a school as defined in
188 s. 1003.01; or a voluntary prekindergarten education program as
189 described in s. 1002.53(3) (a), (b), or (c) and who commits an
190 offense under this section against a student of the private
191 school, school, or voluntary prekindergarten education program;
192 or

193 3. Twenty-four years of age or older who commits an offense
194 under this section against a child younger than 16 years of age,
195 regardless of whether the person knows or has reason to know the
196 age of the child

197
198 commits a felony of the second ~~third~~ degree, punishable as
199 provided in s. 775.082, s. 775.083, or s. 775.084.

200 (b) A person who violates this subsection and who has
201 previously been convicted of or adjudicated delinquent for any
202 violation of this section commits a felony of the second degree,
203 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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204 Section 6. Paragraph (f) of subsection (3) of section
 205 921.0022, Florida Statutes, is amended to read:

206 921.0022 Criminal Punishment Code; offense severity ranking
 207 chart.—

208 (3) OFFENSE SEVERITY RANKING CHART

209 (f) LEVEL 6

Florida Statute	Felony Degree	Description
316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051 (3)	2nd	Knowing forgery of pedigree papers.
499.0051 (4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051 (5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875 (1)	3rd	Taking firearm from law enforcement officer.
784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.

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217	784.041	3rd	Felony battery; domestic battery by strangulation.
218	784.048 (3)	3rd	Aggravated stalking; credible threat.
219	784.048 (5)	3rd	Aggravated stalking of person under 16.
220	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
221	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
222	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
223	784.081 (2)	2nd	Aggravated assault on specified official or employee.
224	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
225	784.083 (2)	2nd	Aggravated assault on code inspector.
226	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
227	790.115 (2) (d)	2nd	Discharging firearm or weapon on school

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property.

790.161(2)

2nd

Make, possess, or throw destructive device with intent to do bodily harm or damage property.

229

790.164(1)

2nd

False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

230

790.19

2nd

Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.

231

794.011(8)(a)

3rd

Solicitation of minor to participate in sexual activity by custodial adult.

232

794.05(1)

2nd

Unlawful sexual activity with specified minor.

233

800.04(5)(d)

3rd

Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.

234

800.04(6)(b)

2nd

Lewd or lascivious conduct; offender 18 years of age or older.

235

806.031(2)

2nd

Arson resulting in great bodily harm to firefighter or any other person.

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237	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
238	<u>810.145 (8) (b)</u>	<u>2nd</u>	<u>Video voyeurism; certain minor victims; 2nd or subsequent offense.</u>
239	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
240	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
241	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
242	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
243	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
244	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
245	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

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246	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
247	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
248	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
249	825.103 (2) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
250	827.03 (1)	3rd	Abuse of a child.
251	827.03 (3) (c)	3rd	Neglect of a child.
252	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
253	836.05	2nd	Threats; extortion.
254	836.10	2nd	Written threats to kill or do bodily injury.
255	843.12	3rd	Aids or assists person to escape.
	847.011	3rd	Distributing, offering to distribute, or

