

By the Committee on Criminal Justice; and Senator Benacquisto

591-02368-12

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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          a separate offense may be charged for each child;  
11          amending s. 943.0435, F.S.; requiring a person  
12          convicted of a video voyeurism violation to register  
13          as a sexual offender if the victim of the violation  
14          was a minor; amending s. 810.145, F.S.; revising the  
15          definition of the term "place and time when a person  
16          has a reasonable expectation of privacy" to include  
17          the interior of a residential dwelling; increasing the  
18          classification of specified video voyeurism offenses  
19          involving minors; amending s. 921.0022, F.S.; ranking  
20          a violation of s. 810.145(8)(b), F.S., above its  
21          default value for purposes of the offense severity  
22          ranking chart of the Criminal Punishment Code;  
23          providing an effective date.

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

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

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, a  
80 separate offense may be charged for each such child in each such  
81 photograph, motion picture, exhibition, show, representation,  
82 image, data, computer depiction, or other presentation. 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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784.041	3rd	Felony battery; domestic battery by strangulation.
784.048 (3)	3rd	Aggravated stalking; credible threat.
784.048 (5)	3rd	Aggravated stalking of person under 16.
784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081 (2)	2nd	Aggravated assault on specified official or employee.
784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083 (2)	2nd	Aggravated assault on code inspector.
787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
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.
- 238 810.145 (8) (b) 2nd Video voyeurism; certain minor victims;  
2nd or subsequent offense.
- 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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825.102 (1) 3rd Abuse of an elderly person or disabled adult.

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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

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possessing with intent to distribute  
obscene materials depicting minors.

256

847.012

3rd

Knowingly using a minor in the  
production of materials harmful to  
minors.

257

847.0135(2)

3rd

Facilitates sexual conduct of or with a  
minor or the visual depiction of such  
conduct.

258

914.23

2nd

Retaliation against a witness, victim,  
or informant, with bodily injury.

259

944.35(3)(a)2.

3rd

Committing malicious battery upon or  
inflicting cruel or inhuman treatment on  
an inmate or offender on community  
supervision, resulting in great bodily  
harm.

260

944.40

2nd

Escapes.

261

944.46

3rd

Harboring, concealing, aiding escaped  
prisoners.

262

944.47(1)(a)5.

2nd

Introduction of contraband (firearm,  
weapon, or explosive) into correctional  
facility.

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951.22(1)           3rd    Intoxicating drug, firearm, or weapon  
  introduced into county facility.

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Section 7. This act shall take effect October 1, 2012.