

FLORIDA HOUSE OF REPRESENTATIVES

FINAL BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: [CS/CS/HB 757](#)

TITLE: Sexual Images

SPONSOR(S): Redondo and Kincart Jonsson

COMPANION BILL: [CS/CS/CS/SB 1180](#) (Gaetz)

LINKED BILLS: None

RELATED BILLS: None

FINAL HOUSE FLOOR ACTION: 115 Y's

0 N's

GOVERNOR'S ACTION: Pending

SUMMARY

Effect of the Bill:

CS/CS/HB 757 prohibits a person from possessing with the intent to promote a lewd or lascivious image, as a second-degree felony. Under the bill, it is a third-degree felony, if a person knowingly solicits, possesses, controls, or intentionally views a lewd or lascivious image.

The bill prohibits a person from knowingly soliciting child pornography, as a third-degree felony. Additionally, the bill provides criteria that may be used to evidence actual or simulated lewd exhibition of the genitals of a minor for the purposes of classifying an image as child pornography.

The bill also prohibits a person from doing the following without the consent of the identifiable person depicted:

- Willfully generating an altered sexual depiction, as a third-degree felony.
- Soliciting any altered sexual depiction, as a third-degree felony.
- Possessing any altered sexual depiction with the intent to maliciously promote such visual depiction, as a third-degree felony.

The bill authorizes a person who is portrayed in an altered sexual depiction without his or her consent to initiate a civil cause of action against specified offenders.

Fiscal or Economic Impact:

The bill may have an indeterminate positive impact on jail and prison beds. Additionally, the bill may have an indeterminate positive fiscal impact on private individuals who are portrayed in an altered sexual depiction.

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ANALYSIS

EFFECT OF THE BILL:

Lewd or Lascivious Images

CS/CS/HB 757 prohibits a person from possessing with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes a lewd or lascivious image. A person who violates this prohibition commits a second-degree felony. This offense is not ranked on the [offense severity ranking chart \(OSRC\)](#), and as such, defaults to a Level 4 offense. The bill provides that the possession of three or more copies of such photograph, motion picture, exhibition, show, representation, or presentation is prima facie evidence of an intent to promote. (Section [1](#))

Under the bill, it is a third-degree felony, if a person knowingly solicits, possesses, controls, or intentionally views 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 a lewd or lascivious image. This offense is ranked as a Level 3 offense on the OSRC. The bill provides that the solicitation, possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. Additionally, if such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation includes a lewd or lascivious image depicting more than one minor, then each such minor in each such photograph, motion picture, exhibition, show,

STORAGE NAME: h0757z

DATE: 5/9/2025

image, data, computer depiction, representation, or presentation that is knowingly solicited, possessed, controlled, or intentionally viewed is a separate offense. (Section [1](#))

The bill specifies that the prohibitions on soliciting, possessing, controlling, or intentionally viewing such material do not apply when such actions are taken as part of a law enforcement investigation. (Section [1](#))

The bill defines “lewd or lascivious image” to mean:

- Any image depicting [lewd or lascivious exhibition](#); or
- Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray lewd or lascivious exhibition in the presence of an identifiable minor. (Section [1](#))

Under the bill, an “identifiable minor” means a person:

- Who was less than 16 years of age at the time the image was created, altered, adapted, or modified, or whose image as a person less than 16 years of age was used in the creating, altering, adapting, or modifying of the image; and
- Who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. (Section [1](#))

Child Pornography

The bill specifies that in determining whether an image constitutes [child pornography](#), “actual or simulated lewd exhibition of the genitals” of the minor, may be evidenced by the overall content of the image, taking into account the age of the minor depicted and, including, but not limited to, whether:

- The focal point of the image is on the minor’s genitals;
- The setting of the image is sexually suggestive or in a place or pose generally associated with sexual conduct;
- The minor is depicted in an unnatural pose, or in inappropriate attire, considering the age of the minor;
- The image suggests sexual coyness or a willingness to engage in sexual conduct; or
- The image is intended or designed to elicit a sexual response in the viewer. (Section [2](#))

The bill prohibits a person from knowingly soliciting 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 child pornography. A violation of this prohibition is a third-degree felony, ranked as Level 6 offense on the OSRC. (Section [2](#))

The solicitation of each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes child pornography depicting more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly solicited is a separate offense. (Section [2](#))

Altered Sexual Depictions

The bill prohibits a person from willfully generating an [altered sexual depiction](#) of an identifiable person, without the consent of the identifiable person. A person who generates such an altered sexual depiction commits a third-degree felony, ranked as a Level 3 offense on the OSRC. (Sections [3](#) and [4](#))

The bill also prohibits a person from soliciting any altered sexual depiction of an identifiable person, without the consent of the identifiable person, when he or she knows or reasonably should have known that such visual depiction was an altered sexual depiction. A person who solicits such an altered sexual depiction commits a third-degree felony, ranked as a Level 2 offense on the OSRC. (Sections [3](#) and [4](#))

The bill prohibits a person from possessing with the intent to maliciously promote any altered sexual depiction of an identifiable person, without the consent of the identifiable person, when he or she knows or reasonably should have known that such visual depiction was an altered sexual depiction. A person who possesses such an altered sexual depiction with the intent to maliciously promote it commits a third-degree felony, ranked as a Level 3 offense on the OSRC. (Sections [3](#) and [4](#))

The bill authorizes a person who is portrayed in an altered sexual depiction without his or her consent to initiate a civil cause of action against a person who willfully generates such an altered sexual depiction or against a person who possesses such an altered sexual depiction with the intent to maliciously promote such visual depiction to obtain appropriate relief to prevent or remedy such actions, including:

- Injunctive relief.
- Monetary damages to include \$10,000 or actual damages incurred.
- Reasonable attorney fees and costs. (Section [3](#))

The bill defines “generate” to mean to create, alter, adapt, or modify any image by electronic, mechanical, or other computer-generated means to portray an identifiable person or to offer or agree to do the same. (Section [3](#))

Subject to the Governor’s veto powers, the effective date of this bill is October 1, 2025. (Section [5](#))

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate positive impact on prison beds by creating new felony offenses for possessing a lewd or lascivious image with the intent to promote, knowingly soliciting, possessing, controlling, or intentionally viewing a lewd or lascivious image, soliciting child pornography, generating altered sexual depictions, soliciting altered sexual depictions, and possessing altered sexual depictions with the intent to maliciously promote, which may result in more prison admissions.

LOCAL GOVERNMENT:

The bill may have an indeterminate positive impact on jail beds by creating new felony offenses for possessing a lewd or lascivious image with the intent to promote, knowingly soliciting, possessing, controlling, or intentionally viewing a lewd or lascivious image, soliciting child pornography, generating altered sexual depictions, soliciting altered sexual depictions, and possessing altered sexual depictions with the intent to maliciously promote, which may result in more jail admissions.

PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on any person who is portrayed in an altered sexual depiction without his or her consent by authorizing such a person to initiate a civil action to recover monetary damages from a person who:

- Generates such an altered sexual depiction.
- Possesses such an altered sexual depiction with the intent to maliciously promote such visual depiction.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Lewd or Lascivious Exhibition](#)

The Florida Supreme Court has held that the terms "lewd" and "lascivious" mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.^{1, 2}

Section [800.04\(7\), F.S.](#), prohibits a person from intentionally doing any of the following in the presence of a victim who is less than 16 years of age:

- Masturbating.
- Exposing his or her genitals in a lewd or lascivious manner.

¹ *Chesebrough v. State*, 255 So.2d 675, 677 (Fla. 1971).

² Whether an act or conduct is lewd or lascivious is a factual issue to be decided on a case-by-case basis. *Andrews v. State*, 130 So. 3d 788, 790 (Fla. 1st DCA 2014).

- Committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.

Lewd or lascivious exhibition is a second-degree felony³ if the offender is 18 years of age or older⁴ and a third-degree felony⁵ if the offender is younger than 18 years of age.^{6, 7}

Child Pornography

Section [827.071, F.S.](#), defines child pornography as:

- Any image depicting a minor⁸ engaged in sexual conduct; or
- Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor⁹ engaged in sexual conduct.¹⁰

Section [827.071\(4\), F.S.](#), makes it a second-degree felony for a person to possess with the intent to promote¹¹ any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of a person's intent to promote.

Section [827.071\(5\), F.S.](#), makes it a third-degree felony for any person to knowingly possess, control, or intentionally view¹² a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows includes child pornography. 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. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes child pornography depicting more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse,¹³ sexual bestiality,¹⁴ masturbation, or sadomasochistic abuse;¹⁵ actual or simulated lewd exhibition of the genitals; actual physical

³ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. [775.082](#), [775.083](#), or [775.084, F.S.](#)

⁴ Ranked as a Level 5 offense on the offense severity ranking chart (OSRC).

⁵ A third-degree felony is punishable by a term of up to five years' imprisonment and a \$5,000 fine. Ss. [775.082](#), [775.083](#), or [775.084, F.S.](#)

⁶ S. [800.04\(7\)\(b-c\), F.S.](#)

⁷ Ranked as a Level 4 offense on the OSRC.

⁸ "Minor" means any person, whose identity is known or unknown, younger than 18 years of age. S. [827.071\(1\)\(a\), F.S.](#)

⁹ "Identifiable minor" means a person: who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. The term may not be construed to require proof of the actual identity of the identifiable minor. S. [827.071\(1\)\(e\), F.S.](#)

¹⁰ S. [827.071\(1\)\(b\), F.S.](#)

¹¹ "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same. S. [827.071\(1\)\(h\), F.S.](#)

¹² "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. S. [827.071\(1\)\(f\), F.S.](#)

¹³ "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. S. [827.071\(1\)\(c\), F.S.](#)

¹⁴ "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other. S. [827.071\(1\)\(k\), F.S.](#)

¹⁵ "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself. S. [827.071\(1\)\(i\), F.S.](#)

contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery¹⁶ or simulates that sexual battery is being or will be committed.¹⁷

U.S. v. Dost

In *U.S. v. Dost*,¹⁸ the critical issue for the court to determine was whether pictures taken by the defendants depicted minors engaged in sexually explicit conduct, which included the lascivious exhibition of the genitals or pubic area.¹⁹ The court opined that a determination of whether there was lascivious exhibition should be made on a case-by-case basis using general principles as a guide for analysis. The court held that a trier of fact should look at the following factors, among any others that may be relevant in a particular case, when determining whether a visual depiction of a minor constitutes lascivious exhibition of the genitals or pubic area:

- Whether the focal point of the visual depiction is on the child's genitalia or pubic area;
- Whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity;
- Whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child;
- Whether the child is fully or partially clothed, or nude;
- Whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity; and
- Whether the visual depiction is intended or designed to elicit a sexual response in the viewer.²⁰

The court asserted that a visual depiction need not involve all of the above-listed factors to constitute lascivious exhibition of the genitals or pubic area, but rather that, a determination should be made based on the overall content of the visual depiction, taking into account the age of the minor.²¹

Generated Child Pornography

Section [827.072, F.S.](#), prohibits a person from knowingly possessing or controlling or intentionally viewing a photograph, a motion picture, a representation, an image, a data file, a computer depiction, or any other presentation which, in whole or in part, he or she knows includes generated child pornography. A person who violates this prohibition commits a third-degree felony.²²

Additionally, a person, commits a third-degree felony, if he or she intentionally creates generated child pornography.²³

"Generated child pornography" means any image that has been created, altered, adapted, or modified by electronic, mechanical, or other computer-generated means to portray a fictitious person, who a reasonable person would regard as being a real person younger than 18 years of age, engaged in sexual conduct.^{24, 25}

Altered Sexual Depictions

¹⁶ "Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose. S. [827.071\(1\)\(j\), F.S.](#)

¹⁷ S. [827.071\(1\)\(i\), F.S.](#) A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

¹⁸ 636 F. Supp. 828 (S.D. California 1986).

¹⁹ "Sexually explicit conduct" as defined in federal law means, actual or simulated: sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person. 18 U.S.C. § 2256.

²⁰ *Dost*, 636 F. Supp. at 832.

²¹ *Id.*

²² This offense is not ranked on the OSRC, and as such, defaults to a Level 1 offense. Ss. [921.0022](#) and [921.0023, F.S.](#)

²³ S. [827.072\(2\)\(b\), F.S.](#) This offense is not ranked on the OSRC, and as such, defaults to a Level 1 offense. S. [921.0023, F.S.](#)

²⁴ S. [827.072\(1\)\(a\), F.S.](#)

²⁵ "Sexual conduct" has the same meaning as in s. [827.071\(1\)\(i\), F.S.](#)

Section [836.13, F.S.](#), prohibits a person from willfully and maliciously promoting²⁶ an altered sexual depiction of an identifiable person,²⁷ without the consent of the identifiable person, when the person promoting such altered sexual depiction knows or reasonably should have known that such depiction was an altered sexual depiction. A person who promotes an altered sexual depiction commits a third-degree felony, ranked as a Level 3 offense on the offense severity ranking chart.²⁸

“Altered sexual depiction” means any visual depiction²⁹ that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person:

- With the nude body parts³⁰ of another person as the nude body parts of the identifiable person;
- With computer-generated nude body parts as the nude body parts of the identifiable person; or
- Engaging in sexual conduct³¹ in which the identifiable person did not engage.³²

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability for promoting an altered sexual depiction.³³

A person who is portrayed in such an altered sexual depiction without his or her consent may initiate a civil cause of action against a person who willfully and maliciously promoted such depiction and may obtain appropriate relief to prevent or remedy the promotion, including:

- Injunctive relief.
- Monetary damages to include \$10,000 or actual damages incurred.
- Reasonable attorney fees and costs.³⁴

Legal Considerations

As a general rule, pornography can be banned only if obscene.³⁵ However, nonconsensual altered sexual depictions are distinguishable from consensual pornography as the person being depicted has not given his or her consent and did not actually engage in the sexual behavior he or she is depicted as doing. Such depictions may exploit the depicted person for other’s gratification and may cause emotional and reputational harm stemming from subsequent uses of the depiction and society’s response to the person depicted.³⁶

Offense Severity Ranking Chart

Felony offenses which are subject to the Criminal Punishment Code³⁷ are listed in a single offense severity ranking chart (OSRC),³⁸ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense

²⁶ “Promote” means to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same. S. [836.13\(1\)\(d\), F.S.](#)

²⁷ “Identifiable person” means a person who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. S. [836.13\(1\)\(b\), F.S.](#)

²⁸ S. [921.0022\(3\)\(c\), F.S.](#)

²⁹ “Visual depiction” includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or other visual representation. S. [836.13\(1\)\(e\), F.S.](#)

³⁰ “Nude body parts” means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. The term does not under any circumstances include a mother breastfeeding her baby. S. [836.13\(1\)\(c\), F.S.](#)

³¹ S. [847.001\(19\), F.S.](#)

³² S. [836.13\(1\)\(a\), F.S.](#)

³³ S. [836.13\(4\), F.S.](#)

³⁴ S. [836.13\(5\), F.S.](#)

³⁵ *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 240 (2002).

³⁶ Mathew B. Kugler and Carly Pace, *Deepfake Privacy: Attitudes and Regulation*, Northwestern University Law Review, 2021 Vol 116:611, p. 624-25, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1476&context=nulr> (last visited Apr. 2, 2025).

³⁷ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. [921.002, F.S.](#)

³⁸ S. [921.0022, F.S.](#)

listed in the OSRC is assigned a level according to the severity of the offense.^{39, 40} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{41, 42} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.⁴³

RECENT LEGISLATION:

| YEAR | BILL # | HOUSE SPONSOR(S) | SENATE SPONSOR | OTHER INFORMATION |
|------|-------------------------------|------------------|----------------|------------------------------|
| 2022 | CS/CS/SB 1798 | Harding | Book | Took effect October 1, 2022. |

³⁹ S. [921.0022\(2\), F.S.](#)

⁴⁰ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a Level 1; an unlisted second-degree felony defaults to a Level 4; an unlisted first-degree felony defaults to a Level 7; an unlisted first-degree felony punishable by life defaults to a Level 9; and an unlisted life felony defaults to a Level 10. S. [921.0023, F.S.](#)

⁴¹ Ss. [921.0022](#) and [921.0024, F.S.](#)

⁴² A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. [921.0024\(1\), F.S.](#)

⁴³ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. [921.0024\(2\), F.S.](#)