

## ENROLLED

CS/HB 437, Engrossed 2

2012 Legislature

1  
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 specified video voyeurism provisions to register as  
6 a sexual predator if that person has been convicted of  
7 a specified prior offense; amending s. 827.071, F.S.;  
8 providing that if more than one child is involved in a  
9 violation of provisions prohibiting sexual performance  
10 by a child, each child involved in the violation  
11 creates a separate offense; amending s. 943.0435,  
12 F.S.; requiring a person convicted of video voyeurism  
13 violations to register as a sexual offender; amending  
14 ss. 944.606 and 944.607, F.S.; revising the definition  
15 of the term "sexual offender" to include persons  
16 convicted of specified video voyeurism provisions;  
17 amending s. 810.145, F.S.; 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:

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

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

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57 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
 58 847.0135(6); s. 847.0145; or s. 985.701(1); or a violation of a  
 59 similar law of another jurisdiction;

60 2. The offender has not received a pardon for any felony  
 61 or 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 such photograph, motion picture,  
 78 exhibition, show, representation, image, data, computer  
 79 depiction, or other presentation includes sexual conduct by more  
 80 than one child, then each such child in each such photograph,  
 81 motion picture, exhibition, show, representation, image, data,  
 82 computer depiction, or other presentation that is knowingly  
 83 possessed, controlled, or intentionally viewed is a separate  
 84 offense. A person who violates this subsection commits a felony

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85 of the third degree, punishable as provided in s. 775.082, s.  
 86 775.083, or s. 775.084.

87 Section 4. Paragraph (a) of subsection (1) of section  
 88 943.0435, Florida Statutes, is amended to read:

89 943.0435 Sexual offenders required to register with the  
 90 department; penalty.—

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

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

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

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

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113 control release, or incarceration in a state prison, federal  
 114 prison, private correctional facility, or local detention  
 115 facility;

116 b. Establishes or maintains a residence in this state and  
 117 who has not been designated as a sexual predator by a court of  
 118 this state but who has been designated as a sexual predator, as  
 119 a sexually violent predator, or by another sexual offender  
 120 designation in another state or jurisdiction and was, as a  
 121 result of such designation, subjected to registration or  
 122 community or public notification, or both, or would be if the  
 123 person were a resident of that state or jurisdiction, without  
 124 regard to whether the person otherwise meets the criteria for  
 125 registration as a sexual offender;

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

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

147 (I) Section 794.011, excluding s. 794.011(10);

148 (II) Section 800.04(4)(b) where the victim is under 12  
149 years of age or where the court finds sexual activity by the use  
150 of force or coercion;

151 (III) Section 800.04(5)(c)1. where the court finds  
152 molestation involving unclothed genitals; or

153 (IV) Section 800.04(5)(d) where the court finds the use of  
154 force or coercion and unclothed genitals.

155 2. For all qualifying offenses listed in sub-subparagraph  
156 (1)(a)1.d., the court shall make a written finding of the age of  
157 the offender at the time of the offense.

158  
159 For each violation of a qualifying offense listed in this  
160 subsection, the court shall make a written finding of the age of  
161 the victim at the time of the offense. For a violation of s.  
162 800.04(4), the court shall additionally make a written finding  
163 indicating that the offense did or did not involve sexual  
164 activity and indicating that the offense did or did not involve  
165 force or coercion. For a violation of s. 800.04(5), the court  
166 shall additionally make a written finding that the offense did  
167 or did not involve unclothed genitals or genital area and that  
168 the offense did or did not involve the use of force or coercion.

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169 Section 5. Paragraph (b) of subsection (1) of section  
 170 944.606, Florida Statutes, is amended to read:

171 944.606 Sexual offenders; notification upon release.—

172 (1) As used in this section:

173 (b) "Sexual offender" means a person who has been  
 174 convicted of committing, or attempting, soliciting, or  
 175 conspiring to commit, any of the criminal offenses proscribed in  
 176 the following statutes in this state or similar offenses in  
 177 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),  
 178 where the victim is a minor and the defendant is not the  
 179 victim's parent or guardian; s. 794.011, excluding s.  
 180 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.  
 181 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,  
 182 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;  
 183 or s. 985.701(1); or any similar offense committed in this state  
 184 which has been redesignated from a former statute number to one  
 185 of those listed in this subsection, when the department has  
 186 received verified information regarding such conviction; an  
 187 offender's computerized criminal history record is not, in and  
 188 of itself, verified information.

189 Section 6. Paragraph (a) of subsection (1) of section  
 190 944.607, Florida Statutes, is amended to read:

191 944.607 Notification to Department of Law Enforcement of  
 192 information on sexual offenders.—

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

194 (a) "Sexual offender" means a person who is in the custody  
 195 or control of, or under the supervision of, the department or is  
 196 in the custody of a private correctional facility:

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197           1. On or after October 1, 1997, as a result of a  
 198 conviction for committing, or attempting, soliciting, or  
 199 conspiring to commit, any of the criminal offenses proscribed in  
 200 the following statutes in this state or similar offenses in  
 201 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),  
 202 where the victim is a minor and the defendant is not the  
 203 victim's parent or guardian; s. 794.011, excluding s.  
 204 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.  
 205 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,  
 206 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;  
 207 or s. 985.701(1); or any similar offense committed in this state  
 208 which has been redesignated from a former statute number to one  
 209 of those listed in this paragraph; or

210           2. Who establishes or maintains a residence in this state  
 211 and who has not been designated as a sexual predator by a court  
 212 of this state but who has been designated as a sexual predator,  
 213 as a sexually violent predator, or by another sexual offender  
 214 designation in another state or jurisdiction and was, as a  
 215 result of such designation, subjected to registration or  
 216 community or public notification, or both, or would be if the  
 217 person were a resident of that state or jurisdiction, without  
 218 regard as to whether the person otherwise meets the criteria for  
 219 registration as a sexual offender.

220           Section 7. Subsection (8) of section 810.145, Florida  
 221 Statutes, are amended to read:

222           810.145 Video voyeurism.—

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

224           1. Eighteen years of age or older who is responsible for



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225 the welfare of a child younger than 16 years of age, regardless  
 226 of whether the person knows or has reason to know the age of the  
 227 child, and who commits an offense under this section against  
 228 that child;

229 2. Eighteen years of age or older who is employed at a  
 230 private school as defined in s. 1002.01; a school as defined in  
 231 s. 1003.01; or a voluntary prekindergarten education program as  
 232 described in s. 1002.53(3)(a), (b), or (c) and who commits an  
 233 offense under this section against a student of the private  
 234 school, school, or voluntary prekindergarten education program;  
 235 or

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

240  
 241 commits a felony of the second ~~third~~ degree, punishable as  
 242 provided in s. 775.082, s. 775.083, or s. 775.084.

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

247 Section 8. Paragraph (f) of subsection (3) of section  
 248 921.0022, Florida Statutes, is amended to read:

249 921.0022 Criminal Punishment Code; offense severity  
 250 ranking chart.—

251 (3) OFFENSE SEVERITY RANKING CHART

252 (f) LEVEL 6

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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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262	784.041	3rd	Felony battery; domestic battery by strangulation.
263	784.048 (3)	3rd	Aggravated stalking; credible threat.
264	784.048 (5)	3rd	Aggravated stalking of person under 16.
265	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
266	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
267	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
268	784.081 (2)	2nd	Aggravated assault on specified official or employee.
269	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
	784.083 (2)	2nd	Aggravated assault on code

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inspector.

270 787.02 (2) 3rd False imprisonment; restraining  
with purpose other than those  
in s. 787.01.

271 790.115 (2) (d) 2nd Discharging firearm or weapon  
on school property.

272 790.161 (2) 2nd Make, possess, or throw  
destructive device with intent  
to do bodily harm or damage  
property.

273 790.164 (1) 2nd False report of deadly  
explosive, weapon of mass  
destruction, or act of arson or  
violence to state property.

274 790.19 2nd Shooting or throwing deadly  
missiles into dwellings,  
vessels, or vehicles.

275 794.011 (8) (a) 3rd Solicitation of minor to  
participate in sexual activity  
by custodial adult.

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277	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
278	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.
279	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
280	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
281	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
282	<u>810.145 (8) (b)</u>	<u>2nd</u>	<u>Video voyeurism; certain minor victims; 2nd or subsequent offense.</u>
283	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.

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284	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
285	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
286	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
287	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
288	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
289	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
290	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
291	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.

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292	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
293	825.103 (2) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
294	827.03 (1)	3rd	Abuse of a child.
295	827.03 (3) (c)	3rd	Neglect of a child.
296	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
297	836.05	2nd	Threats; extortion.
298	836.10	2nd	Written threats to kill or do bodily injury.
299	843.12	3rd	Aids or assists person to escape.
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene

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materials depicting minors.

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847.012 3rd Knowingly using a minor in the production of materials harmful to minors.

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847.0135(2) 3rd Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

302

914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury.

303

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.

304

944.40 2nd Escapes.

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944.46 3rd Harboring, concealing, aiding escaped prisoners.

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944.47(1)(a)5. 2nd Introduction of contraband



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(firearm, weapon, or explosive)  
into correctional facility.

307

951.22(1)

3rd

Intoxicating drug, firearm, or  
weapon introduced into county  
facility.

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309

Section 9. This act shall take effect October 1, 2012.