

CHAPTER 2011-220

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 251

An act relating to sexual offenses; providing a short title; amending s. 90.404, F.S.; revising offenses that are considered “child molestation” for purposes of admitting evidence of other crimes, wrongs, or acts in a criminal case involving child molestation; providing for admission of evidence of other crimes, wrongs, or acts in cases involving a sexual offense; defining the term “sexual offense”; amending s. 92.55, F.S.; authorizing the use of service or therapy animals in courts hearing sexual offense cases under certain circumstances; requiring certain property or material that is used in a criminal proceeding to remain in the care, custody, and control of the law enforcement agency, the state attorney, or the court; prohibiting the reproduction of such property or material by the defendant when specified criteria are met by the state attorney; permitting access to the materials by the defendant; amending s. 395.1021, F.S.; requiring a licensed facility that provides emergency room services to arrange for the gathering of forensic medical evidence required for investigation and prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report; amending s. 775.15, F.S.; providing that a prosecution for video voyeurism in violation of specified provisions may, in addition to existing time periods, be commenced within 1 year after the victim of video voyeurism obtains actual knowledge of the existence of such a recording or the recording is confiscated by a law enforcement agency, whichever occurs first; providing that dissemination of a recording before such knowledge or confiscation does not affect such a time period; amending s. 794.052, F.S.; requiring a law enforcement officer to provide or arrange for transportation of a victim of sexual battery to an appropriate facility for medical treatment or forensic examination; providing for a review of a police officer’s final report by a victim and an opportunity for a statement by a victim; amending ss. 794.056 and 938.085, F.S.; requiring that an additional court cost or surcharge be assessed against a defendant who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, certain criminal offenses; providing for proceeds of the additional court cost or surcharge to be deposited into the Rape Crisis Program Trust Fund; reenacting s. 20.435(21)(a), F.S., relating to the Rape Crisis Program Trust Fund, to incorporate the amendment made to s. 794.056, F.S., in a reference thereto; reenacting s. 794.055(3)(b), F.S., relating to access to services for victims of sexual battery, to incorporate the amendment made to s. 938.085, F.S., in a reference thereto; amending s. 960.003, F.S.; providing for hepatitis testing of persons charged with certain offenses; providing an appropriation to the Department of Legal Affairs for the purpose of funding a nonprofit organization for specified purposes; amending s. 1003.42, F.S.; requiring that public schools provide comprehensive health education that addresses concepts of Internet

safety; amending s. 827.071, F.S.; defining the term “intentionally view”; prohibiting controlling or intentionally viewing any photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation that includes sexual conduct by a child; providing an exception; providing penalties; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made to s. 827.071, F.S., by the act; providing effective dates.

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 other crimes, wrongs, or acts involving a sexual offense 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 “sexual offense” 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. 825.1025(2)(b), s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

(d)(e)1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a), or paragraph (b), or paragraph (c), no fewer than 10 days before trial, the state shall furnish to the defendant or to the defendant’s counsel a written statement of the acts or offenses it

intends to offer, describing them with the particularity required of an indictment or information. No notice is required for evidence of offenses used for impeachment or on rebuttal.

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

Section 3. Subsection (4) is added to section 92.55, Florida Statutes, to read:

92.55 Judicial or other proceedings involving victim or witness under the age of 16 or person with mental retardation; special protections; use of registered service or therapy animals.—

(4) The court may set any other conditions it finds just and appropriate on the taking of testimony by a child, including the use of a service or therapy animal that has been evaluated and registered according to national standards, in any proceeding involving a sexual offense. When deciding whether to permit a child to testify with the assistance of a registered service or therapy animal, the court shall take into consideration the age of the child, the interests of the child, the rights of the parties to the litigation, and any other relevant factor that would facilitate the testimony by the child.

Section 4. Prohibition on reproduction of child pornography.—

(1) In a criminal proceeding, any property or material that portrays sexual performance by a child as defined in s. 827.071, Florida Statutes, or constitutes child pornography as defined in s. 847.001, Florida Statutes, must remain secured or locked in the care, custody, and control of a law enforcement agency, the state attorney, or the court.

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

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

Section 5. Subsection (2) of section 395.1021, Florida Statutes, is amended to read:

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

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

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 6. 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 7. 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-intervention services from a certified rape crisis center and provide or arrange for transportation to the appropriate facility.

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

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

Section 8. Section 794.056, Florida Statutes, is amended to read:

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided defined in 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), s. 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). 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 9. 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 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 10. 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 11. 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 12. Section 960.003, Florida Statutes, is amended 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 such person to undergo hepatitis and HIV testing within 48 hours after of the information, indictment, or petition for delinquency is filed court order. In the event the victim or, if the victim is a minor, the victim's parent or legal guardian requests hepatitis and HIV testing after 48 hours have elapsed from the filing of the indictment, information, or petition for delinquency, the testing shall be done within 48 hours after the request.

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

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

(3) DISCLOSURE OF RESULTS.—

(a) The results of the test shall be disclosed no later than 2 weeks after the court receives such results, under the direction of the Department of Health, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), which involves the transmission of body fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, and to public health agencies pursuant to s.

775.0877. If the alleged offender is a juvenile, the test results shall also be disclosed to the parent or guardian. When the victim is a victim as described in paragraph (2)(b), the test results must also be disclosed no later than 2 weeks after the court receives such results, to the person charged with or alleged by petition for delinquency to have committed or to the person convicted of or adjudicated delinquent for any offense enumerated in s. 775.0877(1)(a)-(n), or s. 825.1025 regardless of whether the offense involves the transmission of bodily fluids from one person to another, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim, and to public health agencies pursuant to s. 775.0877. Otherwise, hepatitis and HIV test results obtained pursuant to this section are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to any other person except as expressly authorized by law or court order.

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

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

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

(a) The person charged with or convicted of or alleged by petition for delinquency to have committed or been adjudicated delinquent for an offense described in subsection (2) has undergone hepatitis and HIV testing voluntarily or pursuant to 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 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 13. The sum of \$1.5 million in nonrecurring funds from the General Revenue Fund is appropriated in fiscal year 2011-2012 to the Department of Legal Affairs for the purpose of funding Lauren's Kids, a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code, tax I.D. number 26-1252588, to educate adults and children about sexual abuse topics through an in-school curriculum and maintain a 24-hour Crisis Hotline.

Section 14. 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 abuse, and community resources available to victims of dating violence and abuse.

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

Section 15. Effective October 1, 2011, subsections (1) and (5) of section 827.071, Florida Statutes, are amended to read:

827.071 Sexual performance by a child; penalties.—

(1) As used in this section, the following definitions shall apply:

(a) “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.

(b) “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.

~~(c)(b)~~ “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

~~(d)(e)~~ “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

~~(e)(d)~~ “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.

~~(f)(e)~~ “Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose.

~~(g)(f)~~ “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

~~(h)(g)~~ “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical 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 battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

(i)(h) “Sexual performance” means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(j)(i) “Simulated” means the explicit depiction of conduct set forth in paragraph (h) (g) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(5)(a) It is unlawful for any person to knowingly possess, control, or intentionally view 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 any sexual conduct by a child. 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. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

Section 16. Effective October 1, 2011, paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers’ compensation coverage.

440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, <u>control</u> , or <u>intentionally view</u> any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138(2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 17. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2011.

Approved by the Governor June 24, 2011.

Filed in Office Secretary of State June 24, 2011.