

CHAPTER 2019-45

Committee Substitute for Senate Bill No. 160

An act relating to prohibited acts in connection with obscene or lewd materials; amending s. 847.011, F.S.; prohibiting a person from knowingly selling, lending, giving away, distributing, transmitting, showing, or transmuting; offering to commit such actions; having in his or her possession, custody, or control with the intent to commit such actions; or advertising in any manner an obscene, child-like sex doll; providing criminal penalties; prohibiting a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without the intent to commit certain actions; providing criminal penalties; reenacting ss. 772.102(1)(a), 847.02, 847.03, 847.09(2), 895.02(8)(a), 921.0022(3)(f), 933.02, 933.03, and 943.325(2)(g), F.S., relating to the definition of the term “criminal activity,” the confiscation of obscene material, an officer seizing obscene material, legislative intent, the definition of the term “racketeering activity,” level 6 of the offense severity ranking chart, grounds for the issuance of a search warrant, destruction of obscene prints and literature, and the definition of the term “qualifying offender,” respectively, to incorporate the amendment made to s. 847.011, F.S., in references thereto; providing an effective date.

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

Section 1. Present subsections (5) through (10) of section 847.011, Florida Statutes, are redesignated as subsections (6) through (11), respectively, and a new subsection (5) is added to that section, to read:

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—

(5)(a)1. A person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend, give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertise in any manner an obscene, child-like sex doll.

2.a. Except as provided in sub-subparagraph b., a person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. Except as provided in subparagraph 2., a person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is reenacted to read:

772.102 Definitions.—As used in this chapter, the term:

(1) “Criminal activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 414.39, relating to public assistance fraud.
3. Section 440.105 or s. 440.106, relating to workers’ compensation.
4. Part IV of chapter 501, relating to telemarketing.
5. Chapter 517, relating to securities transactions.
6. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.
7. Chapter 550, relating to jai alai frontons.
8. Chapter 552, relating to the manufacture, distribution, and use of explosives.
9. Chapter 562, relating to beverage law enforcement.
10. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
11. Chapter 687, relating to interest and usurious practices.
12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.
13. Chapter 782, relating to homicide.
14. Chapter 784, relating to assault and battery.

15. Chapter 787, relating to kidnapping or human trafficking.
16. Chapter 790, relating to weapons and firearms.
17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
18. Chapter 806, relating to arson.
19. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
20. Chapter 812, relating to theft, robbery, and related crimes.
21. Chapter 815, relating to computer-related crimes.
22. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
23. Section 827.071, relating to commercial sexual exploitation of children.
24. Chapter 831, relating to forgery and counterfeiting.
25. Chapter 832, relating to issuance of worthless checks and drafts.
26. Section 836.05, relating to extortion.
27. Chapter 837, relating to perjury.
28. Chapter 838, relating to bribery and misuse of public office.
29. Chapter 843, relating to obstruction of justice.
30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
32. Chapter 893, relating to drug abuse prevention and control.
33. Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.
34. Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

Section 3. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 847.02, Florida Statutes, is reenacted to read:

847.02 Confiscation of obscene material.—Whenever anyone is convicted under s. 847.011, the court in awarding sentence shall make an order confiscating said obscene material and authorize the sheriff of the county in which the material is held to destroy the same. The sheriff shall file with the court a certificate of his or her compliance.

Section 4. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 847.03, Florida Statutes, is reenacted to read:

847.03 Officer to seize obscene material.—Whenever any officer arrests any person charged with any offense under s. 847.011, the officer shall seize said obscene material and take the same into his or her custody to await the sentence of the court upon the trial of the offender.

Section 5. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, subsection (2) of section 847.09, Florida Statutes, is reenacted to read:

847.09 Legislative intent.—

(2) Nothing in ss. 847.07-847.09 shall be construed to repeal or in any way supersede the provisions of s. 847.011, s. 847.012, or s. 847.013.

Section 6. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (a) of subsection (8) of section 895.02, Florida Statutes, is reenacted to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8) “Racketeering activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.
3. Section 403.727(3)(b), relating to environmental control.
4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.
5. Section 414.39, relating to public assistance fraud.
6. Section 440.105 or s. 440.106, relating to workers’ compensation.
7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.
9. Section 499.0051, relating to crimes involving contraband, adulterated, or misbranded drugs.
10. Part IV of chapter 501, relating to telemarketing.
11. Chapter 517, relating to sale of securities and investor protection.
12. Section 550.235 or s. 550.3551, relating to dogracing and horse-racing.
13. Chapter 550, relating to jai alai frontons.
14. Section 551.109, relating to slot machine gaming.
15. Chapter 552, relating to the manufacture, distribution, and use of explosives.
16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.
17. Chapter 562, relating to beverage law enforcement.
18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
20. Chapter 687, relating to interest and usurious practices.
21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.
22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.
23. Section 777.03, relating to commission of crimes by accessories after the fact.
24. Chapter 782, relating to homicide.
25. Chapter 784, relating to assault and battery.
26. Chapter 787, relating to kidnapping or human trafficking.
27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, credit card crimes, and patient brokering.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 7. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	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.
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.

Florida Statute	Felony Degree	Description
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 property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.

Florida Statute	Felony Degree	Description
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

Florida Statute	Felony Degree	Description
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
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.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 8. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 933.02, Florida Statutes, is reenacted to read:

933.02 Grounds for issuance of search warrant.—Upon proper affidavits being made, a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

- (1) When the property shall have been stolen or embezzled in violation of law;
- (2) When any property shall have been used:
 - (a) As a means to commit any crime;
 - (b) In connection with gambling, gambling implements and appliances; or
 - (c) In violation of s. 847.011 or other laws in reference to obscene prints and literature;
- (3) When any property constitutes evidence relevant to proving that a felony has been committed;

(4) When any property is being held or possessed:

(a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;

(b) In violation of the fish and game laws;

(c) In violation of the laws relative to food and drug; or

(d) In violation of the laws relative to citrus disease pursuant to s. 581.184; or

(5) When the laws in relation to cruelty to animals, as provided in chapter 828, have been or are violated in any particular building or place.

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

Section 9. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, section 933.03, Florida Statutes, is reenacted to read:

933.03 Destruction of obscene prints and literature.—All obscene prints and literature, or other things mentioned in s. 847.011 found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought.

Section 10. For the purpose of incorporating the amendment made by this act to section 847.011, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 943.325, Florida Statutes, is reenacted to read:

943.325 DNA database.—

(2) DEFINITIONS.—As used in this section, the term:

(g) “Qualifying offender” means any person, including juveniles and adults, who is:

1.a. Committed to a county jail;

b. Committed to or under the supervision of the Department of Corrections, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105;

c. Committed to or under the supervision of the Department of Juvenile Justice;

d. Transferred to this state under the Interstate Compact on Juveniles, part XIII of chapter 985; or

e. Accepted under Article IV of the Interstate Corrections Compact, part III of chapter 941; and who is:

2.a. Convicted of any felony offense or attempted felony offense in this state or of a similar offense in another jurisdiction;

b. Convicted of a misdemeanor violation of s. 784.048, s. 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an offense that was found, pursuant to s. 874.04, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03; or

c. Arrested for any felony offense or attempted felony offense in this state.

Section 11. This act shall take effect October 1, 2019.

Approved by the Governor May 23, 2019.

Filed in Office Secretary of State May 23, 2019.