

Florida does not currently have protections in place to keep children from being photographed if they are clothed and in a public place. States who have tried to restrict photography of children without parental consent have struggled. One major issue is the broad change to law if all photography of children requires parental consent - unintended consequences can include issues with parents taking pictures of their own children where other children are present, family members not having parental consent, and overall enforcement of the issue. Making the change more focused, for example restricting the ability of registered sex offenders to take pictures without parental consent, has also met with legal resistance. The major issue is to achieve the goal of keeping children safe from those that would do them harm the law would need to include intent which is difficult to address and enforce.

Due to the issues stated above, and the research detailed below Policy does not suggest pursuing a change to Florida's privacy laws. If a change is desired our recommendation would be to focus on restricting the ability of registered sex offenders to take photos of children without parental consent.

RESEARCH

Overview:

- Generally, no one needs permission to photograph or videotape children as it is protected by the first amendment. ([Child Photography or Videotaping Consent Laws](#))
- If standing in a public place, anyone can usually take a picture of anything including you. This includes a public park, a public beach, or at outdoor sporting events. However, there are exceptions when on private property or when privacy is expected. If a person has a reasonable expectation of privacy like a public bathroom or locker room, then photography without consent is now allowed. This exception also includes private land like homes, backyards, and pool patios. If a photo is taken where someone has a reasonable expectation of privacy, then someone can get in trouble civilly and criminally. Under federal Video Voyeurism Prevention Act, it is a crime to take photos of a person naked without their permission. This also makes it illegal to "...intentionally capture an image of a private area of an individual without their consent and knowingly do so under circumstances in which an individual has a reasonable expectation of privacy" ([Laws About Being Photographed Without Permission](#)).
- Schools can decide whether to allow photography on or around their campus, but it is entirely up to the school and there are no defined methods for the schools to follow ([Child Photography or Videotaping Consent Law](#))

Florida Law:

- There are no Florida statutes that limit photography of minors beyond offenses for taking lewd photographs and child pornography (F.S. 847.0141, F.S. 92.561, F.S. 847.0133, etc)
 - F.S. 540.08 - Unauthorized publication of name or likeness. - "(c) Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph."

- Florida does not have any statute limiting a sexual offender's right to photograph minors without their consent. ([Sex Offender Statute FL](#))
- A person must register as a sex offender if they are convicted of human trafficking, pursuant to F.S. 943.0435, which prescribes F.S. 787.06 as being grounds for registering as a sexual offender. ([F.S. 943.0435](#) & [F.S. 787.06](#))

Other States:

- **Restrictions on registered sex offenders:**
 - Georgia:
 - In 2010, Georgia's law stated that you cannot intentionally photograph a minor, and that it would be a misdemeanor "of a high and aggravated nature". ([Georgia Law](#))
 - "(b) No individual shall intentionally photograph a minor without the consent of the minor's parent or guardian. (c) Any individual who knowingly violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature."
 - As of 2017, Georgia has changed their law to amend it to say "No person required to register as a sexual offender pursuant to Code Section 42-1-12 shall intentionally photograph a minor without the consent of the minor's parent or guardian."
 - The person must also **knowingly** violate this section
 - Wisconsin:
 - Wisconsin Statute 948.14 states that a sex offender may not intentionally capture a visual representation of a minor without the written consent of the minor's parent or legal guardian ([Wisconsin Law](#)).
 - This statute does not apply to a sex offender who is capturing a visual representation of a minor if the sex offender is the minor's parent or legal guardian
 - Prohibits all images of children, regardless of content
 - Sex offenders have the same first amendment rights as other citizens as defined by *DOE v Harris*. This case found that registered sex offenders who have completed their terms of probation and parole enjoy the "full protection of the First Amendment."
 - Wisconsin's Court of Appeals found in *State v. Oatman* that a ban on sex offenders photographing children in public without their consent is unconstitutionally overbroad. The state does have a compelling interest in protecting children, the statute is not narrowly drawn because it applies to all registered sex offenders, including those with no history of abusing children
- **Invasive Visual Recording:**
 - Texas:
 - Chapter 21.15 of the Penal Code refers to invasive visual recording. The old improper photography law focused on photos taken in order to gratify the sexual desire of any person, the new law focuses on:

- Photographing or recording the intimate areas or genitals of another person without that person's consent and in order to gratify sexual desire ([Texas Penal Code](#))
 - **Celebrity Protections:**
 - California
 - You cannot use photographs without consent to advertise and sell products. ([California Law](#))
 - Photographers also cannot photograph children of celebrities.
 - Directed at those who intentionally harasses the child of any other person "because of that person's employment." Harassment, as outlined in the bill, means, willful conduct that "seriously alarms, annoys, torments or terrorizes" the child and that "serves no legitimate purpose. It includes "conduct occurring during the course of any actual or attempted recording" of the child's image or voice by following the child or lying in wait and without consent of the parent. ([Celebrity Children](#))
 - **Attempted Legislation:**
 - New Jersey
 - Assembly Bill 521 (2016) in New Jersey was proposed and included a prison sentence of three-five years, a fine of up to \$15,000, or both. ([New Jersey Law](#))
 - This bill would have made it illegal to photograph, film or record children "under circumstances where a reasonable parent would not expect their child to be subject of such production"

Why Restrict Photographs of Children?

- Traffickers could use photos taken without consent to target specific children
- Even when admitting that they are there to take pictures because they find children "sexy" there is no legal opportunity because the children are fully clothes when pictures were taken ([New Jersey Incident](#))

Issues Related to Regulating Child Photography:

- Unintended photos of children other than your own
- First Amendment restriction - artistic expression, etc.
- Question if the restriction would achieve the intended outcome - would restricting photographs of children keep the children in danger safe?
- Photography laws often include the need for specific intention - could that be proven in a way that would work to keep children safe?

FIRST DRAFT:

Overview:

- Generally, no one needs permission to photograph or videotape children as it is protected by the first amendment. ([Child Photography or Videotaping Consent Laws](#))
- Schools can decide whether to allow photography on or around their campus, but it is entirely up to the school and there are no defined methods for the schools to follow ([Child Photography or Videotaping Consent Laws](#))
- <http://childprotectionresource.online/category/taking-photographs-of-children/> (might help)
- The Child Online Protection Act requires parental consent for the collection of use of any personal information of minors on websites. Photographs, videos, and audio recordings are included in this personal information ([Online Child Privacy Laws](#))
- If standing in a public place, anyone can usually take a picture of anything including you. This includes a public park, a public beach, or at outdoor sporting events. However, there are exceptions when on private property or when privacy is expected. If a person has a reasonable expectation of privacy like a public bathroom or locker room, then photography without consent is now allowed. This exception also includes private land like homes, backyards, and pool patios. If a photo is taken where someone has a reasonable expectation of privacy, then someone can get in trouble civilly and criminally. Under federal Video Voyeurism Prevention Act, it is a crime to take photos of a person naked without their permission. This also makes it illegal to "...intentionally capture an image of a private area of an individual without their consent and knowingly do so under circumstances in which an individual has a reasonable expectation of privacy" ([Laws About Being Photographed Without Permission](#)).
- It is currently legal to photograph children in public without their parents consent, but parents can still be wary. However, photographing minors is not generally illegal in public places ([Laws About Being Photographed Without Permission](#)).
- A photographer has the right to photograph in a public area, they also have the right to use it as an illustration of art or news ([Street Photography](#)).
- Florida does not have any statute limiting a sexual offender's right to photograph minors without their consent. ([Sex Offender Statute FL](#))
- A person must register as a sex offender if they are convicted of human trafficking, pursuant to F.S. 943.0435, which prescribes F.S. 787.06 as being grounds for registering as a sexual offender. ([F.S. 943.0435](#) & [F.S. 787.06](#))
- Photographs that place someone in a false light or to defame them can be illegal. An example could be when a picture is altered in a way that exposed them to hatred or ridicule. It also can happen when a picture is used to illustrate text in a way it creates a false impression. Also, publishing that photo to illustrate an article on child prostitution could lead to a lawsuit ([taking pictures of someone](#))

Florida Law:

- <https://www.palmbeachpost.com/news/crime--law/new-palm-beach-zoo-bans-man-who-photographed-child-without-permission/NVEwioxop1MfqR06n0fbP/>
 - This article is about a man who videotaped a father and his child having a "joyful moment." The zoo banned him from entering the zoo ever again, and the man

was not criminally charged or apprehended because he did not have any prior convictions of sexually-charged offenses. However, police could not do anything about it because it is technically not illegal to take photos of children unless it is with mal-intent.

- Cities like Hollywood, Florida have adopted ordinances that bans adults unaccompanied by a minor child from entering and/or remaining a park playground. This ordinance provides: “it shall be unlawful for any adult to enter and remain in a designated play area, unless the adult is supervising and/or accompanying children who is there visiting the Play Area. Adult is defined by this ordinance as anyone over 18 and children as anyone 12 or younger. In 2015, the city of Hollywood joined Miami Beach in restricting adults in parks. Some NYC parks have similar rules as do Santa Monica, CA, and Columbia, SC ([Banning parks for adults](#)).

Other States:

- In 2010, Georgia’s law stated that you cannot intentionally photograph a minor, and that it would be a misdemeanor “of a high and aggravated nature”. ([Georgia Law](#))
 - “(b) No individual shall intentionally photograph a minor without the consent of the minor’s parent or guardian. (c) Any individual who knowingly violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature.”
 - Georgia passed a sweeping law in 2010 that made it a crime for anyone other than the parents to photograph a child, even a grandparent or someone who captured the image of a child in the background. However, in 2011, they attempted to change this bill to allow people to take photographs of children without a parent’s permission as long as they are not a registered sex offender.
 - An unintended consequence is that a 15 year old grandchild could not have taken a picture their friend ([George Law Change](#))
- As of 2017, Georgia has changed their law to amend it to say No person required to register as a sexual offender pursuant to Code Section 42-1-12 shall intentionally photograph a minor without the consent of the minor's parent or guardian.
 - The person must also **knowingly** violate this section, which opens a whole new can of worms
- Assembly Bill 521 (2016) in New Jersey was proposed and included a prison sentence of three-five years, a fine of up to \$15,000, or both. ([New Jersey Law](#))
 - Unsure if this passes or not, and I am not able to track
 - This bill would have made it illegal to photograph, film or record children “under circumstances where a reasonable parent would not expect their child to be subject of such production
 - Those found in violation could be charged with a third degree misdemeanor, 3-5 years in prison, and/or a fine up to \$15,000. (Student Press Law Center)
- Texas
 - Chapter 21.15 of the Penal Code now refers to **invasive visual recording**. It has a slightly different focus. While the old improper photography law focused on

photos taken in order to gratify the sexual desire of any person, the new law focuses on:

- **Photographing or recording the intimate areas or genitals** of another person
- **Without that person's consent** and in order to **gratify sexual desire**
- ([Texas Penal Code](#))
- California? (think it had something to do with celebrity children)
 - You cannot use photographs without consent to advertise and sell products. ([California Law](#))
 - Photographers also cannot photograph children of celebrities.
 - The bill, authored by Sen. Kevin de León (D-Los Angeles), punishes someone who intentionally harasses the child of any other person "because of that person's employment." Harassment, as outlined in the bill, means willful conduct that "seriously alarms, annoys, torments or terrorizes" the child and that "serves no legitimate purpose. It includes "conduct occurring during the course of any actual or attempted recording" of the child's image or voice by following the child or lying in wait and without consent of the parent. ([Celebrity Children](#))
- <https://photographybay.com/photography-laws/> (might help)
- In Wisconsin
 - Wisconsin Statute 948.14 states that a sex offender may not intentionally capture a visual representation of a minor without the written consent of the minor's parent or legal guardian.
 - This statute does not apply to a sex offender who is capturing a visual representation of a minor if the sex offender is the minor's parent or legal guardian
 - This statute is also broad and not narrowly tailored because it prohibits all images of children, regardless of content
 - Sex offenders have the same first amendment rights as other citizens as defined by *DOE v Harris*. This case found that registered sex offenders who have completed their terms of probation and parole enjoy the "full protection of the First Amendment."
 - Wisconsin's Court of Appeals decision in *State v. Oatman* found that a ban on sex offenders photographing children in public without their consent is unconstitutionally overbroad. The state does have a compelling interest in protecting children, the statute is not narrowly drawn because it applies to all registered sex offenders, including those with no history of abusing children
 - Unintended consequences
 - Since the statute requires all registered sex offenders to seek and obtain parental consent prior to photographing a child, it may lead a sex offender to approach a child and ask "are your parents nearby?" This then encourages sex offenders to make close contact with children

The Children's Campaign's Recommendations

Due to the complex unintended consequences of restricting photography of minors with or without consent, it is difficult to imagine a resolution that wouldn't greatly infringe upon the First Amendment rights of photographers to freedom of expression. The language is too broad to protect people without malicious intent, and there is even a fear that people who would use photos for sexual gratification or human trafficking would get away with it. For instance, there is a high school sporting event. Dozens of parents are there and taking photos of the event. First off, under a law restricting photography of minors without parental consent, these parents are all committing a crime. Secondly, police would have to respond to this by arresting all of them. Due to the sheer number of individuals taking photos at once, this is impossible, and moreover a waste of time. Police are diverting their attention toward innocent parents, which means that they are turning their attention away from guilty people. Additionally, having to arrest all these parents is absurd and completely unnecessary. Is The Children's Campaign in support of any bills restricting the ability of photographers to take photos or videos of children? There does not seem to be a solution that wouldn't negatively affect anyone. One thing that has been proposed is not allowing registered sex offenders to take photos of children, but this becomes difficult because sex offenders aren't always necessarily predators towards children. Additionally, one can become a sex offender at a young age for possession of a naked photo from someone underage. The overall complexity of having to ensure that these negative unintended consequences do not detriment citizens' rights implies a difficulty in enacting proper legislation.