

By Senator Campbell

33-618A-99

1 A bill to be entitled
2 An act relating to obscenity; requiring public
3 libraries to install and maintain computer
4 software that prohibits access to obscene
5 materials; requiring that such software be
6 installed and maintained on at least one-half
7 of the computers that a library makes available
8 for public use; amending ss. 827.071, 847.0135,
9 F.S.; defining the term "sexually explicit
10 image"; providing that a person may not
11 knowingly send or transmit a sexually explicit
12 image to a child under a specified age;
13 providing a penalty; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Each public library that makes available
19 for public use computer on-line service, Internet service, or
20 local bulletin-board service shall install and maintain
21 computer software that prohibits access to materials that
22 contain obscene descriptions, photographs, or depictions. Such
23 software must be installed and maintained on at least one-half
24 of the library's computers that are available for public use,
25 and, if the library makes only one computer available for
26 public use, such software must be installed and maintained on
27 that computer.

28 Section 2. Section 827.071, Florida Statutes, is
29 amended to read:

30 827.071 Sexual performance by a child; penalties.--
31

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

3 (a) "Deviate sexual intercourse" means sexual conduct
4 between persons not married to each other consisting of
5 contact between the penis and the anus, the mouth and the
6 penis, or the mouth and the vulva.

7 (b) "Performance" means any play, motion picture,
8 photograph, or dance or any other visual representation
9 exhibited before an audience.

10 (c) "Promote" means to procure, manufacture, issue,
11 sell, give, provide, lend, mail, deliver, transfer, transmute,
12 publish, distribute, circulate, disseminate, present, exhibit,
13 or advertise or to offer or agree to do the same.

14 (d) "Sadomasochistic abuse" means flagellation or
15 torture by or upon a person, or the condition of being
16 fettered, bound, or otherwise physically restrained, for the
17 purpose of deriving sexual satisfaction from inflicting harm
18 on another or receiving such harm oneself.

19 (e) "Sexual battery" means oral, anal, or vaginal
20 penetration by, or union with, the sexual organ of another or
21 the anal or vaginal penetration of another by any other
22 object; however, "sexual battery" does not include an act done
23 for a bona fide medical purpose.

24 (f) "Sexual bestiality" means any sexual act between a
25 person and an animal involving the sex organ of the one and
26 the mouth, anus, or vagina of the other.

27 (g) "Sexual conduct" means actual or simulated sexual
28 intercourse, deviate sexual intercourse, sexual bestiality,
29 masturbation, or sadomasochistic abuse; actual lewd exhibition
30 of the genitals; actual physical contact with a person's
31 clothed or unclothed genitals, pubic area, buttocks, or, if

1 such person is a female, breast, with the intent to arouse or
2 gratify the sexual desire of either party; or any act or
3 conduct which constitutes sexual battery or simulates that
4 sexual battery is being or will be committed.

5 (h) "Sexual performance" means any performance or part
6 thereof which includes sexual conduct by a child of less than
7 18 years of age.

8 (i) "Sexually explicit image" means any visual
9 depiction, image, characterization, or representation,
10 including any cartoon, caricature, video, or still photograph,
11 of an animal, human, or animate figure, either adult or child,
12 engaged in sexual conduct as defined in paragraph (g).

13 (j)(i) "Simulated" means the explicit depiction of
14 conduct set forth in paragraph (g) which creates the
15 appearance of such conduct and which exhibits any uncovered
16 portion of the breasts, genitals, or buttocks.

17 (2) A person is guilty of the use of a child in a
18 sexual performance if, knowing the character and content
19 thereof, he or she employs, authorizes, or induces a child
20 less than 18 years of age to engage in a sexual performance
21 or, being a parent, legal guardian, or custodian of such
22 child, consents to the participation by such child in a sexual
23 performance. Whoever violates this subsection is guilty of a
24 felony of the second degree, punishable as provided in s.
25 775.082, s. 775.083, or s. 775.084.

26 (3) A person is guilty of promoting a sexual
27 performance by a child when, knowing the character and content
28 thereof, he or she produces, directs, or promotes any
29 performance which includes sexual conduct by a child less than
30 18 years of age. Whoever violates this subsection is guilty of
31

1 a felony of the second degree, punishable as provided in s.
2 775.082, s. 775.083, or s. 775.084.

3 (4) It is unlawful for any person to possess with the
4 intent to promote any photograph, motion picture, exhibition,
5 show, representation, or other presentation which, in whole or
6 in part, includes any sexual conduct by a child. The
7 possession of three or more copies of such photograph, motion
8 picture, representation, or presentation is prima facie
9 evidence of an intent to promote. Whoever violates this
10 subsection is guilty of a felony of the second degree,
11 punishable as provided in s. 775.082, s. 775.083, or s.
12 775.084.

13 (5) It is unlawful for any person to knowingly possess
14 a photograph, motion picture, exhibition, show,
15 representation, or other presentation which, in whole or in
16 part, he or she knows to include any sexual conduct by a
17 child. The possession of each such photograph, motion
18 picture, exhibition, show, representation, or presentation is
19 a separate offense. Whoever violates this subsection is guilty
20 of a felony of the third degree, punishable as provided in s.
21 775.082, s. 775.083, or s. 775.084.

22 (6) A person may not knowingly send, transmit,
23 distribute, or exchange by mail, facsimile, distribution, or
24 other means of communication, a sexually explicit image to any
25 child whom the person knows, should know, or has reason to
26 believe is less than 18 years of age. Whoever violates this
27 subsection commits a felony of the third degree, punishable as
28 provided in s. 775.082, s. 775.083, or s. 775.084.

29 Section 3. Section 847.0135, Florida Statutes, is
30 amended to read:

31 847.0135 Computer pornography; penalties.--

1 (1) SHORT TITLE.--This section shall be known and may
2 be cited as the "Computer Pornography and Child Exploitation
3 Prevention Act of 1986."

4 (2) COMPUTER PORNOGRAPHY.--A person who:

5 (a) Knowingly compiles, enters into, or transmits by
6 means of computer;

7 (b) Makes, prints, publishes, or reproduces by other
8 computerized means;

9 (c) Knowingly causes or allows to be entered into or
10 transmitted by means of computer; or

11 (d) Buys, sells, receives, exchanges, or disseminates,
12

13 any notice, statement, or advertisement, or any minor's name,
14 telephone number, place of residence, physical

15 characteristics, or other descriptive or identifying

16 information, for purposes of facilitating, encouraging,

17 offering, or soliciting sexual conduct of or with any minor,

18 or the visual depiction of such conduct. The fact that an

19 undercover operative or law enforcement officer was involved

20 in the detection and investigation of an offense under this

21 section shall not constitute a defense to a prosecution under

22 this section. Any person who violates the provisions of this

23 subsection commits a felony of the third degree, punishable as

24 provided for in s. 775.082, s. 775.083, or s. 775.084.

25 (3) CERTAIN USES OF COMPUTER SERVICES PROHIBITED.--Any
26 person who knowingly utilizes a computer on-line service,

27 Internet service, or local bulletin board service to seduce,

28 solicit, lure, or entice, or attempt to seduce, solicit, lure,

29 or entice, a child or another person believed by the person to

30 be a child, to commit any illegal act described in chapter

31 794, relating to sexual battery; chapter 800, relating to

1 | lewdness and indecent exposure; or chapter 827, relating to
2 | child abuse, commits a felony of the third degree, punishable
3 | as provided in s. 775.082, s. 775.083, or s. 775.084.

4 | (4) CERTAIN USES OF ELECTRONIC DEVICES

5 | PROHIBITED.--Any person who knowingly uses a computer or
6 | electronic device to send, transmit, distribute, or dispense
7 | by means of computer or other electronic device or
8 | transmission, including a facsimile machine that sends or
9 | receives facsimiles in any digitally encoded manner, any
10 | sexually explicit image as defined in s. 827.071(1)(i), to any
11 | child whom the person knows, should know, or has reason to
12 | believe is less than 18 years of age, commits a felony of the
13 | third degree, punishable as provided in s. 775.082, s.
14 | 775.083, or s. 775.084.

15 | (5)~~(4)~~ OWNERS OR OPERATORS OF COMPUTER SERVICES

16 | LIABLE.--It is unlawful for any owner or operator of a
17 | computer on-line service, Internet service, or local bulletin
18 | board service knowingly to permit a subscriber to utilize the
19 | service to commit a violation of this section. Any person who
20 | violates this section commits a misdemeanor of the first
21 | degree, punishable by a fine not exceeding \$2,000.

22 | (6)~~(5)~~ STATE CRIMINAL JURISDICTION.--A person is

23 | subject to prosecution in this state pursuant to chapter 910
24 | for any conduct proscribed by this section which the person
25 | engages in, while either within or outside this state, if by
26 | such conduct the person commits a violation of this section
27 | involving a child residing in this state, or another person
28 | believed by the person to be a child residing in this state.

29 | Section 4. This act shall take effect October 1, 1999.

30 |
31 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Requires each public library that allows public access to on-line computer services to install and maintain computer software that prohibits access to obscene materials. Requires that such software be installed and maintained on at least one-half of the computers available to the public. Provides that it is a third-degree felony for a person to send or transmit by mail, computer, or facsimile a sexually explicit image to a child whom the person knows or should know is less than 18 years of age.