

Bill No. CS for CS for SB 144

Amendment No. Barcode 044792

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Geller moved the following amendment:

Senate Amendment (with title amendment)
Delete everything after the enacting clause

and insert:

Section 1. Paragraph (g) of subsection (1) of section 827.071, Florida Statutes, is amended to read:

827.071 Sexual performance by a child; penalties.--
(1) As used in this section, the following definitions shall apply:

(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

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1 constitute "sexual conduct."

2 Section 2. Section 847.001, Florida Statutes, is
3 amended to read:

4 847.001 Definitions.--~~As when~~ used in this chapter,
5 the term:

6 (1) "Child pornography" means any image depicting a
7 minor engaged in sexual conduct.

8 (2)~~(1)~~ "Computer" means an electronic, magnetic,
9 optical, electrochemical, or other high-speed data processing
10 device performing logical, arithmetic, or storage functions
11 and includes any data storage facility or communications
12 facility directly related to or operating in conjunction with
13 such device. The term also includes: any on-line service,
14 Internet service, or local bulletin board; any electronic
15 storage device, including a floppy disk or other magnetic
16 storage device; or any compact disc that has read-only memory
17 and the capacity to store audio, video, or written materials.

18 (3)~~(2)~~ "Deviate sexual intercourse" means sexual
19 conduct between persons not married to each other consisting
20 of contact between the penis and the anus, the mouth and the
21 penis, or the mouth and the vulva.

22 (4)~~(3)~~ "Harmful to minors" means ~~that quality of~~ any
23 reproduction, imitation, characterization, description,
24 exhibition, presentation, or representation, of in whatever
25 kind or form, depicting of nudity, sexual conduct, or sexual
26 excitement when it:

27 (a) Predominantly appeals to the prurient, shameful,
28 or morbid interest of minors;

29 (b) Is patently offensive to prevailing standards in
30 the adult community as a whole with respect to what is
31 suitable material for minors; and

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1 (c) Taken as a whole, is without serious literary,
2 artistic, political, or scientific value for minors.

3
4 A mother's breastfeeding of her baby is not under any
5 circumstance "harmful to minors."

6 (5)~~(4)~~ "Minor" means any person under the age of 18
7 years.

8 (6)~~(5)~~ "Nudity" means the showing of the human male or
9 female genitals, pubic area, or buttocks with less than a
10 fully opaque covering; or the showing of the female breast
11 with less than a fully opaque covering of any portion thereof
12 below the top of the nipple; or the depiction of covered male
13 genitals in a discernibly turgid state. A mother's
14 breastfeeding of her baby does not under any circumstance
15 constitute "nudity," irrespective of whether or not the nipple
16 is covered during or incidental to feeding.

17 (7)~~(6)~~ "Person" includes individuals, children, firms,
18 associations, joint ventures, partnerships, estates, trusts,
19 business trusts, syndicates, fiduciaries, corporations, and
20 all other groups or ~~and~~ combinations.

21 (8)~~(7)~~ "Obscene" means the status of material which:

22 (a) The average person, applying contemporary
23 community standards, would find, taken as a whole, appeals to
24 the prurient interest;

25 (b) Depicts or describes, in a patently offensive way,
26 sexual conduct as specifically defined herein; and

27 (c) Taken as a whole, lacks serious literary,
28 artistic, political, or scientific value.

29
30 A mother's breastfeeding of her baby is not under any
31 circumstance "obscene."

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1 ~~(9)(8)~~ "Sadomasochistic abuse" means flagellation or
2 torture by or upon a person or animal, or the condition of
3 being fettered, bound, or otherwise physically restrained, for
4 the purpose of deriving sexual satisfaction, or satisfaction
5 brought about as a result of sadistic violence, from
6 inflicting harm on another or receiving such harm oneself.

7 ~~(10)(9)~~ "Sexual battery" means oral, anal, or vaginal
8 penetration by, or union with, the sexual organ of another or
9 the anal or vaginal penetration of another by any other
10 object; however, "sexual battery" does not include an act done
11 for a bona fide medical purpose.

12 ~~(11)(10)~~ "Sexual bestiality" means any sexual act
13 between a person and an animal involving the sex organ of the
14 one and the mouth, anus, or vagina of the other.

15 ~~(12)(11)~~ "Sexual conduct" means actual or simulated
16 sexual intercourse, deviate sexual intercourse, sexual
17 bestiality, masturbation, or sadomasochistic abuse; actual
18 lewd exhibition of the genitals; actual physical contact with
19 a person's clothed or unclothed genitals, pubic area,
20 buttocks, or, if such person is a female, breast with the
21 intent to arouse or gratify the sexual desire of either party;
22 or any act or conduct which constitutes sexual battery or
23 simulates that sexual battery is being or will be committed.
24 A mother's breastfeeding of her baby does not under any
25 circumstance constitute "sexual conduct."

26 ~~(13)(12)~~ "Sexual excitement" means the condition of
27 the human male or female genitals when in a state of sexual
28 stimulation or arousal.

29 ~~(14)(13)~~ "Simulated" means the explicit depiction of
30 conduct described in subsection ~~(12)(11)~~ which creates the
31 appearance of such conduct and which exhibits any uncovered

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1 portion of the breasts, genitals, or buttocks.

2 Section 3. Subsection (2) of section 847.0135, Florida
3 Statutes, is amended to read:

4 847.0135 Computer pornography; penalties.--

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

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

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

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

12 (d) Buys, sells, receives, exchanges, or disseminates,
13

14 any notice, statement, or advertisement of, ~~or~~ any minor's
15 name, telephone number, place of residence, physical
16 characteristics, or other descriptive or identifying
17 information, for purposes of facilitating, encouraging,
18 offering, or soliciting sexual conduct of or with any minor,
19 or the visual depiction of such conduct, commits a felony of
20 the third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.984. The fact that an undercover operative
22 or law enforcement officer was involved in the detection and
23 investigation of an offense under this section shall not
24 constitute a defense to a prosecution under this section. ~~Any~~
25 ~~person who violates the provisions of this subsection commits~~
26 ~~a felony of the third degree, punishable as provided for in s.~~
27 ~~775.082, s. 775.083, or s. 775.084.~~

28 Section 4. Section 847.0137, Florida Statutes, is
29 created to read:

30 847.0137 Transmission of pornography by electronic
31 device or equipment prohibited; penalties.--

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1 (1) For purposes of this section:

2 (a) "Minor" means any person less than 18 years of
3 age.

4 (b) "Transmit" means the act of sending and causing to
5 be delivered any image, information, or data from one or more
6 persons or places to one or more other persons or places over
7 or through any medium, including the Internet, by use of any
8 electronic equipment or device.

9 (2) Notwithstanding ss. 847.012 and 847.0133, any
10 person in this state who knew or reasonably should have known
11 that he or she was transmitting child pornography, as defined
12 in s. 847.001, to another person in this state or in another
13 jurisdiction commits a felony of the third degree, punishable
14 as provided in s. 775.082, s. 775.083, or s. 775.084.

15 (3) Notwithstanding ss. 847.012 and 847.0133, any
16 person in any jurisdiction other than this state who knew or
17 reasonably should have known that he or she was transmitting
18 child pornography, as defined in s. 847.001, to any person in
19 this state commits a felony of the third degree, punishable as
20 provided in s. 775.082, s. 775.083, or s. 775.084.

21 (4) This section shall not be construed to prohibit
22 prosecution of a person in this state or another jurisdiction
23 for a violation of any law of this state, including a law
24 providing for greater penalties than prescribed in this
25 section, for the transmission of child pornography, as defined
26 in s. 847.001, to any person in this state.

27 (5) A person is subject to prosecution in this state
28 pursuant to chapter 910 for any act or conduct proscribed by
29 this section, including a person in a jurisdiction other than
30 this state, if the act or conduct violates subsection (3).

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1 The provisions of this section do not apply to
2 subscription-based transmissions such as list servers.

3 Section 5. Section 847.0138, Florida Statutes, is
4 created to read:

5 847.0138 Transmission of material harmful to minors to
6 a minor by electronic device or equipment prohibited;
7 penalties.--

8 (1) For purposes of this section:

9 (a) "Known by the defendant to be a minor" means that
10 the defendant had actual knowledge or had reason to believe
11 that the recipient of the communication was a minor.

12 (b) "Transmit" means to send to a specific individual
13 known by the defendant to be a minor via electronic mail.

14 (2) Notwithstanding ss. 847.012 and 847.0133, any
15 person in this state who knew or reasonably should have known
16 that he or she was transmitting an image, information, or data
17 that is harmful to minors, as defined in s. 847.001, to a
18 specific individual known by the defendant to be a minor in
19 this state commits a felony of the third degree, punishable as
20 provided in s. 775.082, s. 775.083, or s. 775.084.

21 (3) Notwithstanding ss. 847.012 and 847.0133, any
22 person in any jurisdiction other than this state who knew or
23 reasonably should have known that he or she was transmitting
24 an image, information, or data that is harmful to minors, as
25 defined in s. 847.001, to a specific individual known by the
26 defendant to be a minor in this state commits a felony of the
27 third degree, punishable as provided in s. 775.082, s.
28 775.083, or s. 775.084.

29
30 The provisions of this section do not apply to
31 subscription-based transmissions such as list servers.

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1 judicial circuits as part of a related transaction or when any
 2 such offense is connected with an organized criminal
 3 conspiracy affecting two or more judicial circuits. The
 4 statewide grand jury may return indictments and presentments
 5 irrespective of the county or judicial circuit where the
 6 offense is committed or triable. If an indictment is
 7 returned, it shall be certified and transferred for trial to
 8 the county where the offense was committed. The powers and
 9 duties of, and law applicable to, county grand juries shall
 10 apply to a statewide grand jury except when such powers,
 11 duties, and law are inconsistent with the provisions of ss.
 12 905.31-905.40.

13 Section 8. If a court of competent jurisdiction rules
 14 that any part of this act is unconstitutional or otherwise
 15 ineffective, such ruling shall not affect the other parts of
 16 this act and such other parts shall remain effective as though
 17 no such ruling has occurred.

18 Section 9. Except as otherwise expressly provided in
 19 this act, this act shall take effect July 1, 2001.

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22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25
 26 and insert:

27 A bill to be entitled
 28 An act relating to child pornography and images
 29 harmful to minors; amending s. 827.071, F.S.;
 30 revising the definition of "sexual conduct";
 31 amending s. 847.001, F.S.; revising and adding

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1 definitions; amending s. 847.0135, F.S.;

2 revising the "Computer Pornography and Child

3 Exploitation Act of 1986" to clarify certain

4 penalties; creating s. 847.0137, F.S.;

5 prohibiting transmissions of child pornography

6 and any image, information, or data harmful to

7 minors; providing penalties; creating s.

8 847.0138, F.S.; prohibiting transmission of

9 material harmful to minors by electronic device

10 or equipment; providing definitions; providing

11 penalties; creating s. 847.0139, F.S.;

12 providing immunity from civil liability for

13 reporting child pornography, transmission of

14 child pornography, or unlawful transmission of

15 any image, information, or data harmful to

16 minors; amending s. 905.34, F.S.; providing

17 jurisdiction of the statewide grand jury over

18 offenses relating to computer pornography,

19 child exploitation, or violations of s.

20 847.0135, F.S.; providing severability;

21 providing effective dates.

22

23 WHEREAS, The Florida Information Service Technology

24 Development Task Force found and recommended that, while the

25 development of information technology is a rapidly expanding

26 enterprise and the issue of transmission of adult and child

27 pornography is difficult to resolve, legislation should be

28 enacted to address the following situations: where a person

29 in or outside of the State of Florida knowingly transmits any

30 type of pornography to a minor in Florida, a crime has

31 occurred and the State of Florida has jurisdiction; where a

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1 person in the State of Florida transmits child pornography to
2 anyone in or outside the State of Florida a crime has occurred
3 and the State of Florida has jurisdiction; and where a person
4 outside the State of Florida knowingly transmits child
5 pornography to any person in the State of Florida, a crime has
6 occurred and the State of Florida has jurisdiction, and

7 WHEREAS, the task force also recommended that
8 legislation be enacted that, while not mandating that a person
9 report child pornography, the transmission of child
10 pornography, or the unlawful transmission of any image,
11 information, or data that is harmful to minors, would grant
12 civil immunity to any person who reports to any law
13 enforcement officer what he or she reasonably believes to be
14 evidence of child pornography, the transmission of child
15 pornography, or the unlawful transmission of any image,
16 information, or data harmful to any minor in this state, and

17 WHEREAS, the Legislature agrees with the foregoing
18 findings, conclusions, and recommendations of the task force,
19 and finds that legislation enacting the recommendations would
20 facilitate apprehension of persons who transmit child
21 pornography or improperly transmit images harmful to minors
22 while protecting persons from arrest based on unsubstantiated
23 or false accusations or statements or the submission of
24 falsified evidence by the person reporting the transmission,
25 and

26 WHEREAS, the Legislature further finds that the use of
27 minors in pornographic images is harmful to the physiological,
28 emotional, mental, and social well-being of minors and that
29 the dissemination of such images results in subjecting the
30 minors who are the subject of such images to continuing
31 irreparable injury by creating a perpetual record of their

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1 participation in pornographic acts, and

2 WHEREAS, the Legislature further finds that child
3 pornography and images, information, and data that are harmful
4 to minors are frequently used to entice minors to engage in
5 improper sexual activity, and the use of such means to entice
6 minors in Florida to engage in such sexual activity
7 irreparably harms their physiological, emotional, mental, and
8 social well-being, and

9 WHEREAS, the Legislature further finds that the advent
10 and growing use of the Internet and other electronic devices
11 has greatly facilitated transmission of child pornography and
12 images, information, and data that are harmful to minors, thus
13 subjecting minors in Florida to an ever-increasing likelihood
14 of being victimized by the purveyors of such, and

15 WHEREAS, the Legislature further finds that
16 criminalizing the transmission of child pornography and the
17 unlawful transmission of images, information, and data that
18 are harmful to minors is an appropriate means of serving the
19 state's compelling interest in protecting minors in Florida
20 from suffering the irreparable harm they can experience from
21 being subjected to participating in creating the images that
22 are included in such transmissions and from being subjected to
23 receiving the images that are included in such transmissions,
24 and

25 WHEREAS, the Legislature further finds that the First
26 Amendment would not be violated by legislation prohibiting the
27 transmission of child pornography or the transmission of
28 images harmful to minors to a minor in this state, and

29 WHEREAS, the Legislature further finds that deterring
30 and punishing the transmission of child pornography and images
31 harmful to minors can and should be accomplished by amending

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1 the laws of this state, and

2 WHEREAS, the Legislature further finds that the laws of
3 this state may be amended to address jurisdictional concerns
4 regarding transmission of child pornography and transmission
5 of images, information, and data harmful to minors to a minor
6 in this state, as those concerns have already been addressed
7 by the Legislature regarding computer-solicitation offenses
8 against minors, and

9 WHEREAS, the Legislature further finds that the laws of
10 this state may be amended to grant civil immunity to any
11 person who reports to any law enforcement officer what he or
12 she reasonably believes to be child pornography, the
13 transmission of child pornography, or the transmission of
14 images, information, and data that are harmful to minors to a
15 minor in this state, NOW, THEREFORE,

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