

By Senator Geller

29-123-01

1                                   A bill to be entitled  
2           An act relating to improper activity over the  
3           Internet; amending s. 847.001, F.S.; defining  
4           the term "child pornography" for purposes of  
5           ch. 847, F.S.; clarifying the definition of the  
6           term "sexual conduct"; defining the term  
7           "transmit"; creating s. 847.0137, F.S.;  
8           prohibiting transmissions over the Internet of  
9           pornography in specified circumstances;  
10          providing penalties; creating s. 847.0139,  
11          F.S.; providing immunity from civil liability  
12          for reporting child pornography; providing an  
13          effective date.

14  
15           WHEREAS, The Florida Information Service Technology  
16          Development Task Force, in finding that the Internet offers  
17          many opportunities for criminal activity and victimization,  
18          specifically addressed a subset of that criminal activity  
19          relating to the transmission, including Internet transmission,  
20          of adult and child pornography, and

21           WHEREAS, the task force, while it recognizes that such  
22          transmission is a complicated matter involving First Amendment  
23          issues regarding adult pornography and jurisdictional issues  
24          regarding child pornography, nevertheless agreed that internet  
25          transmission of child pornography to a person in this state  
26          constitutes a crime and that Florida has jurisdiction over any  
27          person inside or outside this state who engages in such  
28          transmission and over any person who knows or should know that  
29          he or she is transmitting pornography to a minor in this  
30          state, and

31

1           WHEREAS, the task force also agreed with the statement  
2 that any person in this state who transmits child pornography  
3 to anyone inside or outside this state commits a crime and  
4 that Florida has jurisdiction over such person, and

5           WHEREAS, the task force also agreed with the statement  
6 that any person outside this state who transmits child  
7 pornography to any person inside this state or who knows or  
8 should know that he or she is doing so commits a crime and  
9 that Florida has jurisdiction over such person, and

10           WHEREAS, the Legislature also agrees with these  
11 statements and finds that these statements should extend to  
12 instances in which a person transmits child pornography to  
13 someone whom he or she believes to be a minor but who is  
14 actually a law enforcement officer engaged in an investigation  
15 or operation in accordance with the laws of this state, which  
16 is already statutorily authorized in relation to  
17 computer-solicitation offenses against minors, and

18           WHEREAS, the Legislature finds that the First Amendment  
19 is not violated by prohibiting the transmission by any means  
20 of pornography of any kind to a minor nor by prohibiting the  
21 transmission of child pornography to any person, and

22           WHEREAS, the Legislature finds that the prohibition of  
23 the acts or conduct reflected by the various statements agreed  
24 upon by the task force and the Legislature can be accomplished  
25 by amending the laws of this state, and

26           WHEREAS, the Legislature finds that the laws of this  
27 state may be amended to address jurisdictional concerns  
28 regarding child pornography, as those concerns have already  
29 been addressed by the Legislature regarding  
30 computer-solicitation offenses against minors, and

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1           WHEREAS, the task force also recommended that  
2 legislation be enacted which would not require anyone to  
3 report pornography, including child pornography, but which  
4 would grant civil immunity from lawsuits to any person who  
5 reports to appropriate law enforcement agents what the person  
6 reasonably believes to be child pornography, and

7           WHEREAS, the Legislature finds this recommendation  
8 could lead to the apprehension of persons conveying child  
9 pornography by any means but protects persons from possible  
10 arrest based on unsubstantiated or false accusations or  
11 statements or the submission of falsified evidence by the  
12 person reporting the child pornography, and

13           WHEREAS, the Legislature finds that the laws of this  
14 state may be amended to grant civil immunity to any persons  
15 who report what they reasonably believe to be child  
16 pornography to appropriate law enforcement agents, including  
17 immunity from civil liability for a person who furnishes a  
18 copy of a photograph or other evidence to law enforcement  
19 agents of what the person reasonably believes to be child  
20 pornography, NOW, THEREFORE,

21  
22 Be It Enacted by the Legislature of the State of Florida:

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24           Section 1. Section 847.001, Florida Statutes, is  
25 amended to read:

26           847.001 Definitions.--As when used in this chapter,  
27 the term:

28           (1) "Child pornography" means any image depicting or  
29 intending to depict a minor engaged in sexual conduct.

30           (2)~~(1)~~ "Computer" means an electronic, magnetic,  
31 optical, electrochemical, or other high-speed data processing

1 device performing logical, arithmetic, or storage functions  
2 and includes any data storage facility or communications  
3 facility directly related to or operating in conjunction with  
4 such device. The term also includes: any on-line service,  
5 Internet service, or local bulletin board; any electronic  
6 storage device, including a floppy disk or other magnetic  
7 storage device; or any compact disc that has read-only memory  
8 and the capacity to store audio, video, or written materials.

9 (3)~~(2)~~ "Deviate sexual intercourse" means sexual  
10 conduct between persons not married to each other consisting  
11 of contact between the penis and the anus, the mouth and the  
12 penis, or the mouth and the vulva.

13 (4)~~(3)~~ "Harmful to minors" means that quality of any  
14 description, exhibition, presentation, or representation, in  
15 whatever form, of nudity, sexual conduct, or sexual excitement  
16 when it:

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

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

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

24

25 A mother's breastfeeding of her baby is not under any  
26 circumstance "harmful to minors."

27 (5)~~(4)~~ "Minor" means any person under the age of 18  
28 years.

29 (6)~~(5)~~ "Nudity" means the showing of the human male or  
30 female genitals, pubic area, or buttocks with less than a  
31 fully opaque covering; or the showing of the female breast

1 with less than a fully opaque covering of any portion thereof  
2 below the top of the nipple; or the depiction of covered male  
3 genitals in a discernibly turgid state. A mother's  
4 breastfeeding of her baby does not under any circumstance  
5 constitute "nudity," irrespective of whether or not the nipple  
6 is covered during or incidental to feeding.

7 (7)~~(6)~~ "Person" includes individuals, firms,  
8 associations, corporations, and all other groups and  
9 combinations.

10 (8)~~(7)~~ "Obscene" means the status of material which:

11 (a) The average person, applying contemporary  
12 community standards, would find, taken as a whole, appeals to  
13 the prurient interest;

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

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

18

19 A mother's breastfeeding of her baby is not under any  
20 circumstance "obscene."

21 (9)~~(8)~~ "Sadomasochistic abuse" means flagellation or  
22 torture by or upon a person or animal, or the condition of  
23 being fettered, bound, or otherwise physically restrained, for  
24 the purpose of deriving sexual satisfaction, or satisfaction  
25 brought about as a result of sadistic violence, from  
26 inflicting harm on another or receiving such harm oneself.

27 (10)~~(9)~~ "Sexual battery" means oral, anal, or vaginal  
28 penetration by, or union with, the sexual organ of another or  
29 the anal or vaginal penetration of another by any other  
30 object; however, "sexual battery" does not include an act done  
31 for a bona fide medical purpose.

1           ~~(11)~~~~(10)~~ "Sexual bestiality" means any sexual act  
2 between a person and an animal involving the sex organ of the  
3 one and the mouth, anus, or vagina of the other.

4           ~~(12)~~~~(11)~~ "Sexual conduct" means actual or simulated  
5 sexual intercourse, deviate sexual intercourse, sexual  
6 bestiality, masturbation, or sadomasochistic abuse; actual  
7 lewd exhibition of the genitals; actual physical contact with  
8 a person's clothed or unclothed genitals, pubic area,  
9 buttocks, or, if such person is a female, breast with the  
10 intent to arouse or gratify the sexual desire of either party;  
11 or any act or conduct which constitutes sexual battery or  
12 simulates that sexual battery is being or will be committed.  
13 A mother's breastfeeding of her baby does not under any  
14 circumstance constitute "sexual conduct."

15           ~~(13)~~~~(12)~~ "Sexual excitement" means the condition of  
16 the human male or female genitals when in a state of sexual  
17 stimulation or arousal.

18           ~~(14)~~~~(13)~~ "Simulated" means the explicit depiction of  
19 conduct described in subsection~~(12)~~~~(11)~~which creates the  
20 appearance of such conduct and which exhibits any uncovered  
21 portion of the breasts, genitals, or buttocks.

22           ~~(15)~~ "Transmit" means to send an electronic mail  
23 communication to a specified electronic mail address or  
24 addresses.

25           Section 2. Section 847.0137, Florida Statutes, is  
26 created to read:

27           847.0137 Transmission of pornography by means of the  
28 Internet prohibited; penalties.--

29           (1) For purposes of this section, the term "minor"  
30 means any person less than 18 years of age.

31

1           (2) Notwithstanding ss. 847.012 and 847.0133, any  
2 person in this state who knew or believed under the  
3 circumstances that he or she was transmitting, by means of the  
4 Internet:

5           (a) Child pornography, as defined in s. 847.001, to  
6 another person in this state or in another jurisdiction; or

7           (b) An image harmful to minors, as defined in s.  
8 847.001, to a known minor, or a person believed to be a minor,  
9 in this state

10  
11 commits a felony of the third degree, punishable as provided  
12 in s. 775.082, s. 775.083, or s. 775.084.

13           (3) Notwithstanding ss. 847.012 and 847.0133, any  
14 person in any jurisdiction other than this state who knew or  
15 believed under the circumstances that he or she was  
16 transmitting, by means of the Internet:

17           (a) Child pornography, as defined in s. 847.001, to  
18 any person in this state; or

19           (b) An image harmful to minors, as defined in s.  
20 847.001, to a known minor, or a person believed to be a minor,  
21 in this state

22  
23 commits a felony of the third degree, punishable as provided  
24 in s. 775.082, s. 775.083, or s. 775.084.

25           (4) This section does not apply to subscription-based  
26 transmissions such as list servers.

27           (5) This section does not prohibit the prosecution of  
28 a person in this state or another jurisdiction for a violation  
29 of any law of this state, including a law providing for  
30 penalties greater than those prescribed in this section, for  
31 the transmission, by means of the Internet, of an image

1 harmful to minors, or child pornography, as defined in s.  
2 847.001, to any person in this state.

3 (6) A person is subject to prosecution in this state  
4 pursuant to chapter 910 for any act or conduct proscribed by  
5 this section, including a person in a jurisdiction other than  
6 this state, if the act or conduct violates paragraph (3)(a) or  
7 paragraph (3)(b).

8 Section 3. Section 847.0139, Florida Statutes, is  
9 created to read:

10 847.0139 Immunity from civil liability for reporting  
11 child pornography.--Any person who reports to a law  
12 enforcement officer what the person reasonably believes to be  
13 child pornography as defined in s. 847.001(1) may not be held  
14 civilly liable for reporting such information. For purposes of  
15 this section, reporting child pornography to a law enforcement  
16 officer may include furnishing the officer with a copy of a  
17 photograph or other evidence of what the person reasonably  
18 believes to be child pornography.

19 Section 4. This act shall take effect July 1, 2001.  
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22 SENATE SUMMARY

23 Defines the terms "child pornography" and "transmit" for  
24 purposes of ch. 847, F.S. Provides that it is a  
25 third-degree felony for a person to knowingly transmit  
26 child pornography over the Internet or to transmit an  
27 image to a minor over the Internet which is an image  
28 harmful to minors. Provides for prosecuting a person in  
29 another jurisdiction who unlawfully transmits to a person  
30 in this state any child pornography or an image harmful  
31 to a minor. Provides that a person is immune from civil  
liability for reporting child pornography to a law  
enforcement officer. (See bill for details.)