

By the Committee on Criminal Justice and Senator Geller

307-1624-01

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

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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:

23
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 a
29 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 that he or she was transmitting,
3 by means of the Internet:

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

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

9
10 commits a felony of the third degree, punishable as provided
11 in s. 775.082, s. 775.083, or s. 775.084.

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

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

17 (b) An image harmful to minors, as defined in s.
18 847.001, to a known minor, or a person believed to be a minor,
19 in this state

20
21 commits a felony of the third degree, punishable as provided
22 in s. 775.082, s. 775.083, or s. 775.084.

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

25 (5) This section does not prohibit the prosecution of
26 a person in this state or another jurisdiction for a violation
27 of any law of this state, including a law providing for
28 penalties greater than those prescribed in this section, for
29 the transmission, by means of the Internet, of an image
30 harmful to minors, or child pornography, as defined in s.
31 847.001, to any person in this state.

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

6 Section 3. Section 847.0139, Florida Statutes, is
7 created to read:

8 847.0139 Immunity from civil liability for reporting
9 child pornography.--Any person who reports to a law
10 enforcement officer what the person reasonably believes to be
11 child pornography as defined in s. 847.001(1) may not be held
12 civilly liable for reporting such information. For purposes of
13 this section, reporting child pornography to a law enforcement
14 officer may include furnishing the officer with a copy of a
15 photograph or other evidence of what the person reasonably
16 believes to be child pornography.

17 Section 4. This act shall take effect July 1, 2001.

18
19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 Senate Bill 144

- 22 - Deletes from the definition of "child pornography" the
23 phrase "or intending to depict" so that the bill defines
24 "child pornography" as "any image depicting a minor
25 engaged in sexual conduct."
26 - Deletes from the elements of the new offenses the phrase
27 "or believed under the circumstances" so the state would
28 have to prove the Internet user actually knew he or she
29 was transmitting illegal images.
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