

By the Committees on Judiciary, Criminal Justice and Senator
Geller

308-1884-01

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; amending s.
13 905.34, F.S.; extending the jurisdiction of a
14 statewide grand jury to certain offenses
15 relating to computer pornography and
16 exploitation; providing an effective date.

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

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

1 he or she is transmitting pornography to a minor in this
2 state, and

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

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

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

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

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

28 WHEREAS, the Legislature finds that the laws of this
29 state may be amended to address jurisdictional concerns
30 regarding child pornography, as those concerns have already
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1 | been addressed by the Legislature regarding

2 | computer-solicitation offenses against minors, and

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

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

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

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24 | Be It Enacted by the Legislature of the State of Florida:

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26 | Section 1. Section 847.001, Florida Statutes, is
27 | amended to read:

28 | 847.001 Definitions.--~~As when~~ used in this chapter,
29 | the term:

30 | (1) "Child pornography" means any image depicting a
31 | minor engaged in sexual conduct.

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

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

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

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

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

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

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

29 (5)~~(4)~~ "Minor" means any person under the age of 18
30 years.

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1 (6)~~(5)~~ "Nudity" means the showing of the human male or
2 female genitals, pubic area, or buttocks with less than a
3 fully opaque covering; or the showing of the female breast
4 with less than a fully opaque covering of any portion thereof
5 below the top of the nipple; or the depiction of covered male
6 genitals in a discernibly turgid state. A mother's
7 breastfeeding of her baby does not under any circumstance
8 constitute "nudity," irrespective of whether or not the nipple
9 is covered during or incidental to feeding.

10 (7)~~(6)~~ "Person" includes individuals, firms,
11 associations, corporations, and all other groups and
12 combinations.

13 (8)~~(7)~~ "Obscene" means the status of material which:

14 (a) The average person, applying contemporary
15 community standards, would find, taken as a whole, appeals to
16 the prurient interest;

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

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

21
22 A mother's breastfeeding of her baby is not under any
23 circumstance "obscene."

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

30 (10)~~(9)~~ "Sexual battery" means oral, anal, or vaginal
31 penetration by, or union with, the sexual organ of another or

1 the anal or vaginal penetration of another by any other
2 object; however, "sexual battery" does not include an act done
3 for a bona fide medical purpose.

4 (11)~~(10)~~ "Sexual bestiality" means any sexual act
5 between a person and an animal involving the sex organ of the
6 one and the mouth, anus, or vagina of the other.

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

18 (13)~~(12)~~ "Sexual excitement" means the condition of
19 the human male or female genitals when in a state of sexual
20 stimulation or arousal.

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

25 (15) "Transmit" means to send an electronic mail
26 communication to a specified electronic mail address or
27 addresses.

28 Section 2. Section 847.0137, Florida Statutes, is
29 created to read:

30 847.0137 Transmission of pornography by means of the
31 Internet prohibited; penalties.--

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

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

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

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

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

14 (3) Notwithstanding ss. 847.012 and 847.0133, any
15 person in any jurisdiction other than this state who knew that
16 he or she was 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. Section 905.34, Florida Statutes, is
20 amended to read:

21 905.34 Powers and duties; law applicable.--The
22 jurisdiction of a statewide grand jury impaneled under this
23 chapter shall extend throughout the state. The subject matter
24 jurisdiction of the statewide grand jury shall be limited to
25 the offenses of:

26 (1) Bribery, burglary, carjacking, home-invasion
27 robbery, criminal usury, extortion, gambling, kidnapping,
28 larceny, murder, prostitution, perjury, and robbery;

29 (2) Crimes involving narcotic or other dangerous
30 drugs;

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1 (3) Any violation of the provisions of the Florida
2 RICO (Racketeer Influenced and Corrupt Organization) Act,
3 including any offense listed in the definition of racketeering
4 activity in s. 895.02(1)(a), providing such listed offense is
5 investigated in connection with a violation of s. 895.03 and
6 is charged in a separate count of an information or indictment
7 containing a count charging a violation of s. 895.03, the
8 prosecution of which listed offense may continue independently
9 if the prosecution of the violation of s. 895.03 is terminated
10 for any reason;

11 (4) Any violation of the provisions of the Florida
12 Anti-Fencing Act;

13 (5) Any violation of the provisions of the Florida
14 Antitrust Act of 1980, as amended;

15 (6) Any crime involving, or resulting in, fraud or
16 deceit upon any person;

17 (7) Any violation of s. 847.0135, relating to computer
18 pornography and child exploitation prevention or any offense
19 related to a violation of s. 847.0135;

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21 or any attempt, solicitation, or conspiracy to commit any
22 violation of the crimes specifically enumerated above, when
23 any such offense is occurring, or has occurred, in two or more
24 judicial circuits as part of a related transaction or when any
25 such offense is connected with an organized criminal
26 conspiracy affecting two or more judicial circuits. The
27 statewide grand jury may return indictments and presentments
28 irrespective of the county or judicial circuit where the
29 offense is committed or triable. If an indictment is
30 returned, it shall be certified and transferred for trial to
31 the county where the offense was committed. The powers and

1 duties of, and law applicable to, county grand juries shall
2 apply to a statewide grand jury except when such powers,
3 duties, and law are inconsistent with the provisions of ss.
4 905.31-905.40.

5 Section 5. This act shall take effect July 1, 2001.

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 CS/SB 144

10 Expands the jurisdiction of the statewide grand jury to
11 inquire into crimes involving violations of the Computer
12 Pornography and Child Exploitation Prevention Act under s.
13 847.0135, F.S.

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