

By Representatives Ryan, Hogan, Paul, Melvin, Stansel,  
Kendrick, Spratt, Brutus, Henriquez, Smith and Justice

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"; amending s. 847.0135, F.S.;  
8           revising the "Computer Pornography and Child  
9           Exploitation Act of 1986" to clarify certain  
10          penalties; creating s. 847.0137, F.S.;  
11          prohibiting transmissions over the Internet of  
12          pornography in specified circumstances;  
13          providing penalties; creating s. 847.0139,  
14          F.S.; providing immunity from civil liability  
15          for reporting child pornography; providing an  
16          effective date.

17  
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  
31

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,

23 |  
24 | Be It Enacted by the Legislature of the State of Florida:

25 |  
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 or  
31 | intending to depict a 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.

31

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)~~ "Sadomasochistic 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. Subsection (2) of section 847.0135, Florida  
29 Statutes, is amended to read:

30 847.0135 Computer pornography; penalties.--

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

1           (a) Knowingly compiles, enters into, or transmits by  
2 means of computer;  
3           (b) Makes, prints, publishes, or reproduces by other  
4 computerized means;  
5           (c) Knowingly causes or allows to be entered into or  
6 transmitted by means of computer; or  
7           (d) Buys, sells, receives, exchanges, or disseminates,  
8  
9 any notice, statement, or advertisement ~~of,~~ or any minor's  
10 name, telephone number, place of residence, physical  
11 characteristics, or other descriptive or identifying  
12 information, ~~for purposes of facilitating, encouraging,~~  
13 offering, or soliciting sexual conduct of or with any minor,  
14 or the visual depiction of such conduct, commits a felony of  
15 the third degree, punishable as provided in s. 775.082, s.  
16 775.083, or s. 775.984. The fact that an undercover operative  
17 or law enforcement officer was involved in the detection and  
18 investigation of an offense under this section shall not  
19 constitute a defense to a prosecution under this section. ~~Any~~  
20 ~~person who violates the provisions of this subsection commits~~  
21 ~~a felony of the third degree, punishable as provided for in s.~~  
22 ~~775.082, s. 775.083, or s. 775.084.~~  
23           Section 3. Section 847.0137, Florida Statutes, is  
24 created to read:  
25           847.0137 Transmission of pornography by means of the  
26 Internet prohibited; penalties.--  
27           (1) Notwithstanding ss. 847.012 and 847.0133, any  
28 person in this state who knew or believed, under the  
29 circumstances involved, that he or she was transmitting, by  
30 means of the Internet:  
31

1       (a) Child pornography, as defined in s. 847.001, to  
2 another person in this state or in another jurisdiction; or  
3       (b) An image harmful to minors, as defined in s.  
4 847.001, to a known minor or a person believed to be a minor,  
5 in this state  
6  
7 commits a felony of the third degree, punishable as provided  
8 in s. 775.082, s. 775.083, or s. 775.084.  
9       (2) Notwithstanding ss. 847.012 and 847.0133, any  
10 person in any jurisdiction other than this state who knew or  
11 believed, under the circumstances involved, that he or she was  
12 transmitting, by means of the Internet:  
13       (a) Child pornography, as defined in s. 847.001, to  
14 any person in this state; or  
15       (b) An image harmful to minors, as defined in s.  
16 847.001, to a known minor or a person believed to be a minor,  
17 in this state  
18  
19 commits a felony of the third degree, punishable as provided  
20 in s. 775.082, s. 775.083, or s. 775.084.  
21       (3) The provisions of this section do not apply to  
22 subscription-based transmissions such as list servers.  
23       (4) This section does not prohibit the prosecution of  
24 a person in this state or another jurisdiction for a violation  
25 of any law of this state, including a law providing for  
26 penalties greater than those prescribed in this section, for  
27 the transmission, by means of the Internet, of an image  
28 harmful to minors, or child pornography, as defined in s.  
29 847.001, to any person in this state.  
30       (5) A person is subject to prosecution in this state  
31 pursuant to chapter 910 for any act or conduct proscribed by



1 this section, including a person in a jurisdiction other than  
2 this state, if the act or conduct violates paragraph (2)(a) or  
3 paragraph (2)(b).

4 Section 4. Section 847.0139, Florida Statutes, is  
5 created to read:

6 847.0139 Immunity from civil liability for reporting  
7 child pornography.--Any person who reports to a law  
8 enforcement officer what the person reasonably believes to be  
9 child pornography, as defined in s. 847.001(1), may not be  
10 held civilly liable for reporting such information. For  
11 purposes of this section, reporting child pornography to a law  
12 enforcement officer may include furnishing the officer with a  
13 copy of a photograph or other evidence of what the person  
14 reasonably believes to be child pornography.

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

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18 HOUSE SUMMARY

19 Defines the terms "child pornography" and "transmit" for  
20 purposes of ch. 847, F.S. Revises the "Computer  
21 Pornography and Child Exploitation Act of 1986" to  
22 clarify certain penalties. Provides that it is a third  
23 degree felony for a person to knowingly transmit child  
24 pornography over the Internet or to transmit an image to  
25 a minor over the Internet which is an image harmful to  
26 minors. Provides for prosecuting a person in another  
27 jurisdiction who unlawfully transmits to a person in this  
28 state any child pornography or an image harmful to a  
29 minor. Provides that a person is immune from civil  
30 liability for reporting child pornography to a law  
31 enforcement officer. See bill for details.