

By the Committee on Information Technology and
Representatives Ryan, Hogan, Paul, Melvin, Stansel, Kendrick,
Spratt, Brutus, Henriquez, Smith, Justice, Fiorentino, Gelber
and Mahon

1 A bill to be entitled
2 An act relating to child pornography and images
3 harmful to minors; amending s. 827.071, F.S.;
4 revising the definition of "sexual conduct";
5 amending s. 847.001, F.S.; revising and adding
6 definitions; amending s. 847.0135, F.S.;
7 revising the "Computer Pornography and Child
8 Exploitation Act of 1986" to clarify certain
9 penalties; creating s. 847.0137, F.S.;
10 prohibiting transmissions of child pornography
11 and any image, information, or data harmful to
12 minors; providing penalties; creating s.
13 847.0139, F.S.; providing immunity from civil
14 liability for reporting child pornography,
15 transmission of child pornography, or unlawful
16 transmission of any image, information, or data
17 harmful to minors; providing severability;
18 providing an effective date.

19
20 WHEREAS, The Florida Information Service Technology
21 Development Task Force found and recommended that, while the
22 development of information technology is a rapidly expanding
23 enterprise and the issue of transmission of adult and child
24 pornography is difficult to resolve, legislation should be
25 enacted to address the following situations: where a person
26 in or outside of the State of Florida knowingly transmits any
27 type of pornography to a minor in Florida, a crime has
28 occurred and the State of Florida has jurisdiction; where a
29 person in the State of Florida transmits child pornography to
30 anyone in or outside the State of Florida a crime has occurred
31 and the State of Florida has jurisdiction; and where a person

1 outside the State of Florida knowingly transmits child
2 pornography to any person in the State of Florida, a crime has
3 occurred and the State of Florida has jurisdiction, and
4 WHEREAS, the task force also recommended that
5 legislation be enacted that, while not mandating that a person
6 report child pornography, the transmission of child
7 pornography, or the unlawful transmission of any image,
8 information, or data that is harmful to minors, would grant
9 civil immunity to any person who reports to any law
10 enforcement officer what he or she reasonably believes to be
11 evidence of child pornography, the transmission of child
12 pornography, or the unlawful transmission of any image,
13 information, or data harmful to any minor in this state, and
14 WHEREAS, the Legislature agrees with the foregoing
15 findings, conclusions, and recommendations of the task force,
16 and finds that legislation enacting the recommendations would
17 facilitate apprehension of persons who transmit child
18 pornography or improperly transmit images harmful to minors
19 while protecting persons from arrest based on unsubstantiated
20 or false accusations or statements or the submission of
21 falsified evidence by the person reporting the transmission,
22 and
23 WHEREAS, the Legislature further finds that the use of
24 minors in pornographic images is harmful to the physiological,
25 emotional, mental, and social well-being of minors and that
26 the dissemination of such images results in subjecting the
27 minors who are the subject of such images to continuing
28 irreparable injury by creating a perpetual record of their
29 participation in pornographic acts, and
30 WHEREAS, the Legislature further finds that child
31 pornography and images, information, and data that are harmful

1 to minors are frequently used to entice minors to engage in
2 improper sexual activity, and the use of such means to entice
3 minors in Florida to engage in such sexual activity
4 irreparably harms their physiological, emotional, mental, and
5 social well-being, and

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

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

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

26 WHEREAS, the Legislature further finds that deterring
27 and punishing the transmission of child pornography and images
28 harmful to minors can and should be accomplished by amending
29 the laws of this state, and

30 WHEREAS, the Legislature further finds that the laws of
31 this state may be amended to address jurisdictional concerns

1 regarding transmission of child pornography and transmission
2 of images, information, and data harmful to minors to a minor
3 in this state, as those concerns have already been addressed
4 by the Legislature regarding computer-solicitation offenses
5 against minors, and

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

13

14 Be It Enacted by the Legislature of the State of Florida:

15

16 Section 1. Paragraph (g) of subsection (1) of section
17 827.071, Florida Statutes, is amended to read:

18 827.071 Sexual performance by a child; penalties.--

19 (1) As used in this section, the following definitions
20 shall apply:

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

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

3 847.001 Definitions.--As when used in this chapter,
4 the term:

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

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

17 (3)~~(2)~~ "Deviate sexual intercourse" means sexual
18 conduct between persons not married to each other consisting
19 of contact between the penis and the anus, the mouth and the
20 penis, or the mouth and the vulva.

21 (4)~~(3)~~ "Harmful to minors" means ~~that quality of any~~
22 reproduction, imitation, characterization, description,
23 exhibition, presentation, or representation, of in whatever
24 kind or form, depicting of nudity, sexual conduct, or sexual
25 excitement when it:

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

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

31

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."

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

1 appearance of such conduct and which exhibits any uncovered
2 portion of the breasts, genitals, or buttocks.

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

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

11 847.0135 Computer pornography; penalties.--

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

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

15 (b) Makes, prints, publishes, or reproduces by other
16 computerized means;

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

19 (d) Buys, sells, receives, exchanges, or disseminates,
20

21 any notice, statement, or advertisement of,~~or~~ any minor's
22 name, telephone number, place of residence, physical
23 characteristics, or other descriptive or identifying
24 information, for purposes of facilitating, encouraging,
25 offering, or soliciting sexual conduct of or with any minor,
26 or the visual depiction of such conduct, commits a felony of
27 the third degree, punishable as provided in s. 775.082, s.
28 775.083, or s. 775.984. The fact that an undercover operative
29 or law enforcement officer was involved in the detection and
30 investigation of an offense under this section shall not
31 constitute a defense to a prosecution under this section. ~~Any~~

1 ~~person who violates the provisions of this subsection commits~~
2 ~~a felony of the third degree, punishable as provided for in s.~~
3 ~~775.082, s. 775.083, or s. 775.084.~~

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

6 847.0137 Transmission of pornography by electronic
7 device or equipment prohibited; penalties.--

8 (1) Notwithstanding ss. 847.012 and 847.0133, any
9 person in this state who knew or reasonably should have known
10 that he or she was transmitting:

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

13 (b) Any image, information, or data that is harmful to
14 minors, as defined in s. 847.001, to a minor in this state
15
16 commits a felony of the third degree, punishable as provided
17 in s. 775.082, s. 775.083, or s. 775.084.

18 (2) Notwithstanding ss. 847.012 and 847.0133, any
19 person in any jurisdiction other than this state who knew or
20 reasonably should have known that he or she was transmitting:

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

23 (b) Any image, information, or data that is harmful to
24 minors, as defined in s. 847.001, to a minor in this state
25
26 commits a felony of the third degree, punishable as provided
27 in s. 775.082, s. 775.083, or s. 775.084.

28 (3) The provisions of this section do not apply to
29 subscription-based transmissions such as list servers.

30 (4) This section does not prohibit the prosecution of
31 a person in this state or another jurisdiction for a violation

1 of any law of this state, including a law providing for
2 penalties greater than those prescribed in this section, for
3 the transmission of any image, information, or data that is
4 harmful to minors or the transmission of child pornography to
5 any person in this state.

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

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

13 847.0139 Immunity from civil liability for reporting
14 child pornography, transmission of child pornography, or any
15 image, information, or data harmful to minors to a minor in
16 this state.--Any person who reports to a law enforcement
17 officer what the person reasonably believes to be child
18 pornography, transmission of child pornography, or any image,
19 information, or data that is harmful to minors to a minor in
20 this state may not be held civilly liable for such
21 reporting. For purposes of this section, such reporting may
22 include furnishing the law enforcement officer with any image,
23 information, or data that the person reasonably believes to be
24 evidence of child pornography, transmission of child
25 pornography, or an image, information, or data that is harmful
26 to minors to a minor in this state.

27 Section 6. If a court of competent jurisdiction rules
28 that any part of this act is unconstitutional or otherwise
29 ineffective, such ruling shall not affect the other parts of
30 this act and such other parts shall remain effective as though
31 no such ruling has occurred.

1 Section 7. This act shall take effect July 1, 2001.
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31