

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          847.0138, F.S.; prohibiting transmission of  
14          material harmful to minors by electronic device  
15          or equipment; providing definitions; providing  
16          penalties; creating s. 847.0139, F.S.;  
17          providing immunity from civil liability for  
18          reporting child pornography, transmission of  
19          child pornography, or unlawful transmission of  
20          any image, information, or data harmful to  
21          minors; amending s. 905.34, F.S.; providing  
22          jurisdiction of the statewide grand jury over  
23          offenses relating to computer pornography,  
24          child exploitation, or violations of s.  
25          847.0135, F.S.; providing severability;  
26          requiring public libraries to install and  
27          maintain computer software or equivalent  
28          technology that prohibits access to obscene  
29          materials by minors; providing that the  
30          installation of software or technology in a  
31          library having only one public-access computer

1 is within the library's discretion; providing a  
2 finding of important state interest; providing  
3 effective dates.  
4

5 WHEREAS, The Florida Information Service Technology  
6 Development Task Force found and recommended that, while the  
7 development of information technology is a rapidly expanding  
8 enterprise and the issue of transmission of adult and child  
9 pornography is difficult to resolve, legislation should be  
10 enacted to address the following situations: where a person  
11 in or outside of the State of Florida knowingly transmits any  
12 type of pornography to a minor in Florida, a crime has  
13 occurred and the State of Florida has jurisdiction; where a  
14 person in the State of Florida transmits child pornography to  
15 anyone in or outside the State of Florida a crime has occurred  
16 and the State of Florida has jurisdiction; and where a person  
17 outside the State of Florida knowingly transmits child  
18 pornography to any person in the State of Florida, a crime has  
19 occurred and the State of Florida has jurisdiction, and

20 WHEREAS, the task force also recommended that  
21 legislation be enacted that, while not mandating that a person  
22 report child pornography, the transmission of child  
23 pornography, or the unlawful transmission of any image,  
24 information, or data that is harmful to minors, would grant  
25 civil immunity to any person who reports to any law  
26 enforcement officer what he or she reasonably believes to be  
27 evidence of child pornography, the transmission of child  
28 pornography, or the unlawful transmission of any image,  
29 information, or data harmful to any minor in this state, and

30 WHEREAS, the Legislature agrees with the foregoing  
31 findings, conclusions, and recommendations of the task force,

1 and finds that legislation enacting the recommendations would  
2 facilitate apprehension of persons who transmit child  
3 pornography or improperly transmit images harmful to minors  
4 while protecting persons from arrest based on unsubstantiated  
5 or false accusations or statements or the submission of  
6 falsified evidence by the person reporting the transmission,  
7 and

8           WHEREAS, the Legislature further finds that the use of  
9 minors in pornographic images is harmful to the physiological,  
10 emotional, mental, and social well-being of minors and that  
11 the dissemination of such images results in subjecting the  
12 minors who are the subject of such images to continuing  
13 irreparable injury by creating a perpetual record of their  
14 participation in pornographic acts, and

15           WHEREAS, the Legislature further finds that child  
16 pornography and images, information, and data that are harmful  
17 to minors are frequently used to entice minors to engage in  
18 improper sexual activity, and the use of such means to entice  
19 minors in Florida to engage in such sexual activity  
20 irreparably harms their physiological, emotional, mental, and  
21 social well-being, and

22           WHEREAS, the Legislature further finds that the advent  
23 and growing use of the Internet and other electronic devices  
24 has greatly facilitated transmission of child pornography and  
25 images, information, and data that are harmful to minors, thus  
26 subjecting minors in Florida to an ever-increasing likelihood  
27 of being victimized by the purveyors of such, and

28           WHEREAS, the Legislature further finds that  
29 criminalizing the transmission of child pornography and the  
30 unlawful transmission of images, information, and data that  
31 are harmful to minors is an appropriate means of serving the

1 state's compelling interest in protecting minors in Florida  
2 from suffering the irreparable harm they can experience from  
3 being subjected to participating in creating the images that  
4 are included in such transmissions and from being subjected to  
5 receiving the images that are included in such transmissions,  
6 and

7 WHEREAS, the Legislature further finds that the First  
8 Amendment would not be violated by legislation prohibiting the  
9 transmission of child pornography or the transmission of  
10 images harmful to minors to a minor in this state, and

11 WHEREAS, the Legislature further finds that deterring  
12 and punishing the transmission of child pornography and images  
13 harmful to minors can and should be accomplished by amending  
14 the laws of this state, and

15 WHEREAS, the Legislature further finds that the laws of  
16 this state may be amended to address jurisdictional concerns  
17 regarding transmission of child pornography and transmission  
18 of images, information, and data harmful to minors to a minor  
19 in this state, as those concerns have already been addressed  
20 by the Legislature regarding computer-solicitation offenses  
21 against minors, and

22 WHEREAS, the Legislature further finds that the laws of  
23 this state may be amended to grant civil immunity to any  
24 person who reports to any law enforcement officer what he or  
25 she reasonably believes to be child pornography, the  
26 transmission of child pornography, or the transmission of  
27 images, information, and data that are harmful to minors to a  
28 minor in this state, NOW, THEREFORE,

29  
30 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Paragraph (g) of subsection (1) of section  
2 827.071, Florida Statutes, is amended to read:

3           827.071 Sexual performance by a child; penalties.--

4           (1) As used in this section, the following definitions  
5 shall apply:

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

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

19           847.001 Definitions.--As when used in this chapter,  
20 the term:

21           (1) "Child pornography" means any image depicting a  
22 minor engaged in sexual conduct.

23           (2)~~(1)~~ "Computer" means an electronic, magnetic,  
24 optical, electrochemical, or other high-speed data processing  
25 device performing logical, arithmetic, or storage functions  
26 and includes any data storage facility or communications  
27 facility directly related to or operating in conjunction with  
28 such device. The term also includes: any on-line service,  
29 Internet service, or local bulletin board; any electronic  
30 storage device, including a floppy disk or other magnetic  
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1 storage device; or any compact disc that has read-only memory  
2 and the capacity to store audio, video, or written materials.

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

7 (4)~~(3)~~ "Harmful to minors" means ~~that quality of~~ any  
8 reproduction, imitation, characterization, description,  
9 exhibition, presentation, or representation, of ~~in~~ whatever  
10 kind or form, depicting of nudity, sexual conduct, or sexual  
11 excitement when it:

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

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

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

19  
20 A mother's breastfeeding of her baby is not under any  
21 circumstance "harmful to minors."

22 (5)~~(4)~~ "Minor" means any person under the age of 18  
23 years.

24 (6)~~(5)~~ "Nudity" means the showing of the human male or  
25 female genitals, pubic area, or buttocks with less than a  
26 fully opaque covering; or the showing of the female breast  
27 with less than a fully opaque covering of any portion thereof  
28 below the top of the nipple; or the depiction of covered male  
29 genitals in a discernibly turgid state. A mother's  
30 breastfeeding of her baby does not under any circumstance

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1 constitute "nudity," irrespective of whether or not the nipple  
2 is covered during or incidental to feeding.

3 (7)~~(6)~~ "Person" includes individuals, children, firms,  
4 associations, joint ventures, partnerships, estates, trusts,  
5 business trusts, syndicates, fiduciaries, corporations, and  
6 all other groups or ~~and~~ combinations.

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

8 (a) The average person, applying contemporary  
9 community standards, would find, taken as a whole, appeals to  
10 the prurient interest;

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

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

15  
16 A mother's breastfeeding of her baby is not under any  
17 circumstance "obscene."

18 (9)~~(8)~~ "Sadomasochistic abuse" means flagellation or  
19 torture by or upon a person or animal, or the condition of  
20 being fettered, bound, or otherwise physically restrained, for  
21 the purpose of deriving sexual satisfaction, or satisfaction  
22 brought about as a result of sadistic violence, from  
23 inflicting harm on another or receiving such harm oneself.

24 (10)~~(9)~~ "Sexual battery" means oral, anal, or vaginal  
25 penetration by, or union with, the sexual organ of another or  
26 the anal or vaginal penetration of another by any other  
27 object; however, "sexual battery" does not include an act done  
28 for a bona fide medical purpose.

29 (11)~~(10)~~ "Sexual bestiality" means any sexual act  
30 between a person and an animal involving the sex organ of the  
31 one and the mouth, anus, or vagina of the other.

1           (12)~~(11)~~ "Sexual conduct" means actual or simulated  
2 sexual intercourse, deviate sexual intercourse, sexual  
3 bestiality, masturbation, or sadomasochistic abuse; actual  
4 lewd exhibition of the genitals; actual physical contact with  
5 a person's clothed or unclothed genitals, pubic area,  
6 buttocks, or, if such person is a female, breast with the  
7 intent to arouse or gratify the sexual desire of either party;  
8 or any act or conduct which constitutes sexual battery or  
9 simulates that sexual battery is being or will be committed.  
10 A mother's breastfeeding of her baby does not under any  
11 circumstance constitute "sexual conduct."

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

15           (14)~~(13)~~ "Simulated" means the explicit depiction of  
16 conduct described in subsection(12)~~(11)~~which creates the  
17 appearance of such conduct and which exhibits any uncovered  
18 portion of the breasts, genitals, or buttocks.

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

21           847.0135 Computer pornography; penalties.--

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

23           (a) Knowingly compiles, enters into, or transmits by  
24 use ~~means~~ of computer;

25           (b) Makes, prints, publishes, or reproduces by other  
26 computerized means;

27           (c) Knowingly causes or allows to be entered into or  
28 transmitted by use ~~means~~ of computer; or

29           (d) Buys, sells, receives, exchanges, or disseminates,  
30  
31



1 any notice, statement, or advertisement ~~of, or~~ any minor's  
2 name, telephone number, place of residence, physical  
3 characteristics, or other descriptive or identifying  
4 information, for purposes of facilitating, encouraging,  
5 offering, or soliciting sexual conduct of or with any minor,  
6 or the visual depiction of such conduct, commits a felony of  
7 the third degree, punishable as provided in s. 775.082, s.  
8 775.083, or s. 775.984. The fact that an undercover operative  
9 or law enforcement officer was involved in the detection and  
10 investigation of an offense under this section shall not  
11 constitute a defense to a prosecution under this section. ~~Any~~  
12 ~~person who violates the provisions of this subsection commits~~  
13 ~~a felony of the third degree, punishable as provided for in s.~~  
14 ~~775.082, s. 775.083, or s. 775.084.~~

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

17 847.0137 Transmission of pornography by electronic  
18 device or equipment prohibited; penalties.--

19 (1) For purposes of this section:

20 (a) "Minor" means any person less than 18 years of  
21 age.

22 (b) "Transmit" means the act of sending and causing to  
23 be delivered any image, information, or data from one or more  
24 persons or places to one or more other persons or places over  
25 or through any medium, including the Internet, by use of any  
26 electronic equipment or device.

27 (2) Notwithstanding ss. 847.012 and 847.0133, any  
28 person in this state who knew or reasonably should have known  
29 that he or she was transmitting child pornography, as defined  
30 in s. 847.001, to another person in this state or in another  
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1 jurisdiction commits a felony of the third degree, punishable  
2 as provided in s. 775.082, s. 775.083, or s. 775.084.

3 (3) Notwithstanding ss. 847.012 and 847.0133, any  
4 person in any jurisdiction other than this state who knew or  
5 reasonably should have known that he or she was transmitting  
6 child pornography, as defined in s. 847.001, to any person in  
7 this state commits a felony of the third degree, punishable as  
8 provided in s. 775.082, s. 775.083, or s. 775.084.

9 (4) This section shall not be construed to prohibit  
10 prosecution of a person in this state or another jurisdiction  
11 for a violation of any law of this state, including a law  
12 providing for greater penalties than prescribed in this  
13 section, for the transmission of child pornography, as defined  
14 in s. 847.001, to any person in this state.

15 (5) A person is subject to prosecution in this state  
16 pursuant to chapter 910 for any act or conduct proscribed by  
17 this section, including a person in a jurisdiction other than  
18 this state, if the act or conduct violates subsection (3).

19  
20 The provisions of this section do not apply to  
21 subscription-based transmissions such as list servers.

22 Section 5. Section 847.0138, Florida Statutes, is  
23 created to read:

24 847.0138 Transmission of material harmful to minors to  
25 a minor by electronic device or equipment prohibited;  
26 penalties.--

27 (1) For purposes of this section:

28 (a) "Known by the defendant to be a minor" means that  
29 the defendant had actual knowledge or had reason to believe  
30 that the recipient of the communication was a minor.

31

1           (b) "Transmit" means to send to a specific individual  
2 known by the defendant to be a minor via electronic mail.

3           (2) Notwithstanding ss. 847.012 and 847.0133, any  
4 person in this state who knew or reasonably should have known  
5 that he or she was transmitting an image, information, or data  
6 that is harmful to minors, as defined in s. 847.001, to a  
7 specific individual known by the defendant to be a minor in  
8 this state commits a felony of the third degree, punishable as  
9 provided in s. 775.082, s. 775.083, or s. 775.084.

10           (3) Notwithstanding ss. 847.012 and 847.0133, any  
11 person in any jurisdiction other than this state who knew or  
12 reasonably should have known that he or she was transmitting  
13 an image, information, or data that is harmful to minors, as  
14 defined in s. 847.001, to a specific individual known by the  
15 defendant to be a minor in this state commits a felony of the  
16 third degree, punishable as provided in s. 775.082, s.  
17 775.083, or s. 775.084.

18  
19 The provisions of this section do not apply to  
20 subscription-based transmissions such as list servers.

21           Section 6. Section 847.0139, Florida Statutes, is  
22 created to read:

23           847.0139 Immunity from civil liability for reporting  
24 child pornography, transmission of child pornography, or any  
25 image, information, or data harmful to minors to a minor in  
26 this state.--Any person who reports to a law enforcement  
27 officer what the person reasonably believes to be child  
28 pornography, transmission of child pornography, or any image,  
29 information, or data that is harmful to minors to a minor in  
30 this state may not be held civilly liable for such  
31 reporting. For purposes of this section, such reporting may

1 include furnishing the law enforcement officer with any image,  
2 information, or data that the person reasonably believes to be  
3 evidence of child pornography, transmission of child  
4 pornography, or an image, information, or data that is harmful  
5 to minors to a minor in this state.

6 Section 7. Subsection (7) is added to section 905.34,  
7 Florida Statutes, to read:

8 905.34 Powers and duties; law applicable.--The  
9 jurisdiction of a statewide grand jury impaneled under this  
10 chapter shall extend throughout the state. The subject matter  
11 jurisdiction of the statewide grand jury shall be limited to  
12 the offenses of:

13 (7) Any violation of s. 847.0135, s. 847.0137, or s.  
14 847.0138 relating to computer pornography and child  
15 exploitation prevention, or any offense related to a violation  
16 of s. 847.0135, s. 847.0137, or s. 847.0138;

17  
18 or any attempt, solicitation, or conspiracy to commit any  
19 violation of the crimes specifically enumerated above, when  
20 any such offense is occurring, or has occurred, in two or more  
21 judicial circuits as part of a related transaction or when any  
22 such offense is connected with an organized criminal  
23 conspiracy affecting two or more judicial circuits. The  
24 statewide grand jury may return indictments and presentments  
25 irrespective of the county or judicial circuit where the  
26 offense is committed or triable. If an indictment is  
27 returned, it shall be certified and transferred for trial to  
28 the county where the offense was committed. The powers and  
29 duties of, and law applicable to, county grand juries shall  
30 apply to a statewide grand jury except when such powers,  
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1 duties, and law are inconsistent with the provisions of ss.  
2 905.31-905.40.

3 Section 8. If a court of competent jurisdiction rules  
4 that any part of this act is unconstitutional or otherwise  
5 ineffective, such ruling shall not affect the other parts of  
6 this act and such other parts shall remain effective as though  
7 no such ruling has occurred.

8 Section 9. This section shall take effect October 1,  
9 2001.

10 Each county or municipal public library that makes  
11 available for public use computer on-line service, Internet  
12 service, or local bulletin-board service shall install and  
13 maintain computer software or equivalent technology on any  
14 computer that is made available to persons under 18 years of  
15 age which prohibits access to materials that contain obscene  
16 descriptions, photographs, or depictions. If the library has  
17 only one computer available for public use, the installation  
18 of such software or technology shall be within the discretion  
19 of the library.

20 Section 10. In accordance with section 18, Article VII  
21 of the State Constitution, the Legislature finds that the  
22 installation and maintenance by public libraries of computer  
23 software or equivalent technology that prohibits access by  
24 persons under 18 years of age to obscene materials fulfills an  
25 important state interest.

26 Section 11. Except as otherwise provided, this act  
27 shall take effect July 1, 2001.  
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