

By Senator Argenziano

3-1227A-07

1 A bill to be entitled
2 An act relating to computer child pornography;
3 amending s. 16.56, F.S.; expanding the
4 jurisdiction of the Office of Statewide
5 Prosecution to investigate and prosecute
6 additional offenses related to computer
7 pornography and child exploitation; providing
8 that, for the purpose of the office's
9 jurisdiction, any crime facilitated by or
10 connected to the use of the Internet in one
11 judicial circuit is deemed a crime occurring
12 simultaneously in every judicial circuit within
13 the state; creating s. 775.0847, F.S.;
14 providing definitions; providing that penalties
15 imposed for violating certain statutes be
16 reclassified to the next higher degree if
17 certain specified conditions are satisfied;
18 amending s. 827.071, F.S.; clarifying that
19 certain provisions do not prohibit a state
20 attorney or the Office of Statewide Prosecution
21 from prosecuting a person for violating other
22 laws of the state; amending s. 847.0135, F.S.;
23 prohibiting certain uses of computer services
24 to seduce or lure a child to participate in an
25 illegal act; prohibiting a person from
26 traveling to meet a child in order to engage in
27 illegal sexual activity proscribed by law;
28 amending s. 905.34, F.S.; expanding the subject
29 matter jurisdiction of the statewide grand jury
30 to include certain additional offenses related
31 to computer pornography and child exploitation;

1 providing that, for the purpose of the grand
2 jury's jurisdiction, a crime facilitated by or
3 connected to the use of the Internet in one
4 judicial circuit is deemed a crime occurring
5 simultaneously in every judicial circuit within
6 the state; amending s. 910.15, F.S.; describing
7 the options for choosing the proper venue when
8 a crime is facilitated by communication through
9 use of the mail, telephone, newspaper, radio,
10 television, Internet, or another means of
11 electronic data communication; providing an
12 effective date.

13

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

15

16 Section 1. Paragraph (a) of subsection (1) of section
17 16.56, Florida Statutes, is amended to read:

18 16.56 Office of Statewide Prosecution.--

19 (1) There is created in the Department of Legal
20 Affairs an Office of Statewide Prosecution. The office shall
21 be a separate "budget entity" as that term is defined in
22 chapter 216. The office may:

23 (a) Investigate and prosecute the offenses of:

24 1. Bribery, burglary, criminal usury, extortion,
25 gambling, kidnapping, larceny, murder, prostitution, perjury,
26 robbery, carjacking, and home-invasion robbery;

27 2. Any crime involving narcotic or other dangerous
28 drugs;

29 3. Any violation of the provisions of the Florida RICO
30 (Racketeer Influenced and Corrupt Organization) Act, including
31 any offense listed in the definition of racketeering activity

1 | in s. 895.02(1)(a), providing ~~the such~~ listed offense is
2 | investigated in connection with a violation of s. 895.03 and
3 | is charged in a separate count of an information or indictment
4 | containing a count charging a violation of s. 895.03, the
5 | prosecution of which listed offense may continue independently
6 | if the prosecution of the violation of s. 895.03 is terminated
7 | for any reason;

8 | 4. Any violation of the provisions of the Florida
9 | Anti-Fencing Act;

10 | 5. Any violation of the provisions of the Florida
11 | Antitrust Act of 1980, as amended;

12 | 6. Any crime involving, or resulting in, fraud or
13 | deceit upon any person;

14 | 7. Any violation of s. 847.0135, relating to computer
15 | pornography and child exploitation prevention, or any offense
16 | related to a violation of s. 847.0135, or any violation of
17 | chapter 827 if the crime was facilitated by or connected to
18 | the use of the Internet or any device capable of electronic
19 | data storage or transmission;

20 | 8. Any violation of ~~the provisions of~~ chapter 815;

21 | 9. Any criminal violation of part I of chapter 499;

22 | 10. Any violation of the provisions of the Florida
23 | Motor Fuel Tax Relief Act of 2004;

24 | 11. Any criminal violation of s. 409.920 or s.
25 | 409.9201; or

26 | 12. Any crime involving voter registration, voting, or
27 | candidate or issue petition activities;

28 |
29 | or any attempt, solicitation, or conspiracy to commit any of
30 | the crimes specifically enumerated above. The office shall
31 | have such power only when any such offense is occurring, or

1 | has occurred, in two or more judicial circuits as part of a
2 | related transaction, or when any such offense is connected
3 | with an organized criminal conspiracy affecting two or more
4 | judicial circuits. Any crime facilitated by or connected to
5 | the use of the Internet in one judicial circuit is deemed a
6 | crime occurring simultaneously in every judicial circuit
7 | within the state.

8 | Section 2. Section 775.0847, Florida Statutes, is
9 | created to read:

10 | 775.0847 Possession or promotion of certain images of
11 | child pornography; reclassification.--

12 | (1) As used in this section, the term:

13 | (a) "Child" means any person, whose identity is known
14 | or unknown, younger than 18 years of age.

15 | (b) "Child pornography" means any image depicting a
16 | minor engaged in sexual conduct.

17 | (c) "Sadomasochistic abuse" means flagellation or
18 | torture by or upon a person or the condition of being
19 | fettered, bound, or otherwise physically restrained, for the
20 | purpose of deriving sexual satisfaction from inflicting harm
21 | on another or receiving such harm oneself.

22 | (d) "Sexual battery" means oral, anal, or vaginal
23 | penetration by, or union with, the sexual organ of another or
24 | the anal or vaginal penetration of another by any other
25 | object. Sexual battery does not include an act done for a bona
26 | fide medical purpose.

27 | (e) "Sexual bestiality" means any sexual act, actual
28 | or simulated, between a person and an animal involving the sex
29 | organ of the one and the mouth, anus, or vagina of the other.

30 | (f) "Sexual conduct" means actual or simulated sexual
31 | intercourse, deviate sexual intercourse, sexual bestiality,

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

10 (2) A violation of s. 827.071, s. 847.0135, s.
11 847.0137, or s. 847.0138 shall be reclassified to the next
12 higher degree as provided in subsection (3) if:

13 (a) The offender possesses 10 or more images of any
14 form of child pornography regardless of content; and

15 (b) The content of at least one image contains one or
16 more of the following:

- 17 1. A child who is younger than the age of 5.
- 18 2. Sadomasochistic abuse involving a child.
- 19 3. Sexual battery involving a child.
- 20 4. Sexual bestiality involving a child.
- 21 5. Any video or live movie involving a child.

22 (3)(a) In the case of a felony of the third degree,
23 the offense shall be reclassified to a felony of the second
24 degree.

25 (b) In the case of a felony of the second degree, the
26 offense shall be reclassified to a felony of the first degree.

27
28 For purposes of sentencing under chapter 921 and determining
29 incentive gain-time eligibility under chapter 944, a felony
30 offense that is reclassified under this subsection shall be
31 ranked one level above the ranking under s. 921.0012, s.

1 921.0013, s. 921.0022, or s. 921.0023 of the offense
2 committed.

3 Section 3. Subsection (6) is added to section 827.071,
4 Florida Statutes, to read:

5 827.071 Sexual performance by a child; penalties.--

6 (6) This section does not prohibit a state attorney or
7 the Office of Statewide Prosecution from prosecuting a person
8 in this state for violating any other law of this state,
9 including a law providing for greater penalties than
10 prescribed in this section.

11 Section 4. Section 847.0135, Florida Statutes, is
12 amended to read:

13 847.0135 Computer pornography; penalties.--

14 (1) SHORT TITLE.--This section may ~~shall~~ be ~~known and~~
15 ~~may be~~ cited as the "Computer Pornography and Child
16 Exploitation Prevention Act ~~of 1986~~."

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

18 (a) Knowingly compiles, enters into, or transmits by
19 use of computer;

20 (b) Makes, prints, publishes, or reproduces by other
21 computerized means;

22 (c) Knowingly causes or allows to be entered into or
23 transmitted by use of computer; or

24 (d) Buys, sells, receives, exchanges, or disseminates,
25

26 any notice, statement, or advertisement of any minor's name,
27 telephone number, place of residence, physical

28 characteristics, or other descriptive or identifying

29 information for purposes of facilitating, encouraging,

30 offering, or soliciting sexual conduct of or with any minor,

31 or the visual depiction of such conduct, commits a felony of

1 | the third degree, punishable as provided in s. 775.082, s.
2 | 775.083, or s. 775.084. The fact that an undercover operative
3 | or law enforcement officer was involved in the detection and
4 | investigation of an offense under this section does ~~shall~~ not
5 | constitute a defense to a prosecution under this section.

6 | (3) CERTAIN USES OF COMPUTER SERVICES PROHIBITED.--It
7 | is unlawful for a ~~Any~~ person to who knowingly use ~~utilizes~~ a
8 | computer on-line service, Internet service, or local bulletin
9 | board service, or any other device capable of electronic data
10 | storage or transmission to seduce, solicit, lure, or entice,
11 | or attempt to seduce, solicit, lure, or entice, a child or a
12 | child's guardian, or another person believed by the person to
13 | be a child or a child's guardian, to commit any illegal act
14 | described in chapter 794, ~~relating to sexual battery~~; chapter
15 | 800, ~~relating to lewdness and indecent exposure~~; ~~or~~ chapter
16 | 827; or any other unlawful sexual conduct with a child or with
17 | another person believed by the person to be a child. Each
18 | separate contact with a child, or with another person believed
19 | by the person to be a child, made in violation of this section
20 | constitutes a separate offense. Whoever violates this section,
21 | ~~relating to child abuse~~, commits a felony of the third degree,
22 | punishable as provided in s. 775.082, s. 775.083, or s.
23 | 775.084.

24 | (4) TRAVELING TO MEET A MINOR.--A person who travels
25 | any distance within this state, to this state, or from this
26 | state, by any means, who attempts to do so, or who causes
27 | another to do so or attempt to do so for the purpose of
28 | engaging in any illegal act described in chapter 794, chapter
29 | 800, chapter 827, or any person who engages in any other
30 | unlawful sexual conduct with a child, or with another person
31 | believed by the person to be a child, after using a computer

1 on-line service, Internet service, local bulletin board
2 service, or any other device capable of electronic data
3 storage or transmission with the intent to seduce, solicit,
4 lure, or entice, or who attempts to seduce, solicit, lure, or
5 entice a child or a child's guardian, or another person
6 believed by the person to be a child or a child's guardian,
7 commits a felony of the second degree, punishable as provided
8 in s. 775.082, s. 775.083, or s. 775.084.

9 ~~(5)(4)~~ OWNERS OR OPERATORS OF COMPUTER SERVICES

10 LIABLE.--It is unlawful for any owner or operator of a
11 computer on-line service, Internet service, or local bulletin
12 board service knowingly to permit a subscriber to use ~~utilize~~
13 the service to commit a violation of this section. Any person
14 who violates this section commits a misdemeanor of the first
15 degree, punishable by a fine not exceeding \$2,000.

16 ~~(6)(5)~~ STATE CRIMINAL JURISDICTION.--

17 (a) A person is subject to prosecution in this state
18 pursuant to chapter 910 for any conduct proscribed by this
19 section which the person engages in, while either within or
20 outside this state, if by such conduct the person commits a
21 violation of this section involving a child residing in this
22 state, or another person believed by the person to be a child
23 residing in this state.

24 (b) This section does not prohibit a state attorney or
25 the Office of Statewide Prosecution from prosecuting a person
26 in this state for violating any other law of this state,
27 including a law providing for greater penalties than
28 prescribed in this section.

29 Section 5. Section 905.34, Florida Statutes, is
30 amended to read:
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1 905.34 Powers and duties; law applicable.--The
2 jurisdiction of a statewide grand jury impaneled under this
3 chapter shall extend throughout the state. The subject matter
4 jurisdiction of the statewide grand jury shall be limited to
5 the offenses of:

6 (1) Bribery, burglary, carjacking, home-invasion
7 robbery, criminal usury, extortion, gambling, kidnapping,
8 larceny, murder, prostitution, perjury, and robbery;

9 (2) Crimes involving narcotic or other dangerous
10 drugs;

11 (3) Any violation of the provisions of the Florida
12 RICO (Racketeer Influenced and Corrupt Organization) Act,
13 including any offense listed in the definition of racketeering
14 activity in s. 895.02(1)(a), providing such listed offense is
15 investigated in connection with a violation of s. 895.03 and
16 is charged in a separate count of an information or indictment
17 containing a count charging a violation of s. 895.03, the
18 prosecution of which listed offense may continue independently
19 if the prosecution of the violation of s. 895.03 is terminated
20 for any reason;

21 (4) Any violation of the provisions of the Florida
22 Anti-Fencing Act;

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

25 (6) Any violation of the provisions of chapter 815;

26 (7) Any crime involving, or resulting in, fraud or
27 deceit upon any person;

28 (8) Any violation of s. 847.0135, s. 847.0137, or s.
29 847.0138 relating to computer pornography and child
30 exploitation prevention, or any offense related to a violation
31 of s. 847.0135, s. 847.0137, or s. 847.0138, or any violation

1 of chapter 827 if the crime was facilitated by or connected to
2 the use of the Internet or any device capable of electronic
3 data storage or transmission;

4 (9) Any criminal violation of part I of chapter 499;
5 or

6 (10) Any criminal violation of s. 409.920 or s.
7 409.9201;

8
9 or any attempt, solicitation, or conspiracy to commit any
10 violation of the crimes specifically enumerated above, when
11 any such offense is occurring, or has occurred, in two or more
12 judicial circuits as part of a related transaction or when any
13 such offense is connected with an organized criminal
14 conspiracy affecting two or more judicial circuits. Any crime
15 facilitated by or connected to the use of the Internet in one
16 judicial circuit is deemed a crime occurring simultaneously in
17 every judicial circuit within the state. The statewide grand
18 jury may return indictments and presentments irrespective of
19 the county or judicial circuit where the offense is committed
20 or triable. If an indictment is returned, it shall be
21 certified and transferred for trial to the county where the
22 offense was committed. The powers and duties of, and law
23 applicable to, county grand juries shall apply to a statewide
24 grand jury except when such powers, duties, and law are
25 inconsistent with the provisions of ss. 905.31-905.40.

26 Section 6. Section 910.15, Florida Statutes, is
27 amended to read:

28 910.15 ~~Crimes Theft and fraudulent practices~~
29 concerning communication systems.--

30 (1) A person charged with committing a crime
31 facilitated by a communication through use of the mail,

1 telephone, newspaper, radio, television, Internet, or another
2 means of electronic data communication,+

3 ~~(a) A fraudulent practice in a manner in which it may~~
4 ~~reasonably be assumed that a communication made to facilitate~~
5 ~~the fraudulent practice, or a false or misleading~~
6 ~~representation, could or would be disseminated across~~
7 ~~jurisdictional lines; or~~

8 ~~(b) A theft involving the use of the mail, telephone,~~
9 ~~newspaper, radio, television, or other means of communication,~~

10
11 may be tried in the county in which the dissemination
12 originated, in which the dissemination was made, or in which
13 any act necessary to consummate the offense occurred.

14 (2) For purposes of this section, if a communication
15 is made by or made available through the use of the Internet,
16 the communication was made in every county within the state.

17 Section 7. This act shall take effect July 1, 2007.

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20 SENATE SUMMARY

21 Expands the jurisdiction of the Office of Statewide
22 Prosecution to investigate and prosecute additional
23 offenses related to computer pornography and child
24 exploitation. Provides that, for the purpose of the
25 office's jurisdiction, any crime facilitated by or
26 connected to the use of the Internet in one judicial
27 circuit is deemed a crime occurring simultaneously in
28 every judicial circuit within the state. Provides that
29 certain criminal offenses involving child pornography or
30 the sexual performance of a child must be reclassified to
31 the next higher degree if certain specified conditions
are satisfied. Prohibits certain uses of computer
services to seduce or lure a child to participate in an
illegal act. Prohibits a person from traveling to meet a
child in order to engage in illegal sexual activity
proscribed by law.