

By Senator Fasano

11-880A-07

1                                   A bill to be entitled  
2           An act relating to the distribution of material  
3           harmful to minors; amending s. 847.001, F.S.;  
4           redefining the term "harmful to minors";  
5           amending s. 847.011, F.S.; providing that it is  
6           a third-degree felony for any person to sell,  
7           distribute, transmit, advertise, or to possess  
8           with the intent to sell, distribute, transmit,  
9           or advertise certain materials to minors;  
10          providing that ignorance of a minor's age or  
11          the minor's consent is not a defense in a  
12          prosecution for such a violation; amending s.  
13          847.012, F.S.; prohibiting a person from  
14          knowingly using a minor in the production of  
15          certain materials, regardless of whether those  
16          materials are intended for distribution to  
17          minors or actually distributed to minors;  
18          providing a penalty; providing that ignorance  
19          of a minor's age or the minor's consent is not  
20          a defense in a prosecution for such a  
21          violation; amending s. 847.013, F.S.; providing  
22          that it is a first-degree misdemeanor for any  
23          person to knowingly use a minor in the  
24          production of certain materials depicting  
25          certain images, representations, or acts;  
26          providing that ignorance of a minor's age or  
27          the minor's consent is not a defense in a  
28          prosecution for such a violation; revising  
29          legislative intent concerning the enforcement  
30          of such laws with respect to minors; amending  
31          s. 921.0022, F.S., relating to the offense

1 severity ranking chart of the Criminal  
2 Punishment Code; establishing offense levels to  
3 conform to changes made by the act; providing  
4 an effective date.  
5

6 Be It Enacted by the Legislature of the State of Florida:  
7

8 Section 1. Subsection (6) of section 847.001, Florida  
9 Statutes, is amended to read:

10 847.001 Definitions.--As used in this chapter, the  
11 term:

12 (6) "Harmful to minors" means any reproduction,  
13 imitation, characterization, description, exhibition,  
14 presentation, or representation, of whatever kind or form,  
15 depicting nudity, sexual conduct, or sexual excitement when  
16 it:

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

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

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

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

27 Section 2. Subsection (1) and (2) of section 847.011,  
28 Florida Statutes, are amended to read:

29 847.011 Prohibition of certain acts in connection with  
30 obscene, lewd, etc., materials; penalty.--  
31

1           (1)(a) Any person who knowingly sells, lends, gives  
2 away, distributes, transmits, shows, or transmutes, or offers  
3 to sell, lend, give away, distribute, transmit, show, or  
4 transmute, or has in his or her possession, custody, or  
5 control with intent to sell, lend, give away, distribute,  
6 transmit, show, transmute, or advertise in any manner, any  
7 obscene book, magazine, periodical, pamphlet, newspaper, comic  
8 book, story paper, written or printed story or article,  
9 writing, paper, card, picture, drawing, photograph, motion  
10 picture film, figure, image, phonograph record, or wire or  
11 tape or other recording, or any written, printed, or recorded  
12 matter of any such character which may or may not require  
13 mechanical or other means to be transmuted into auditory,  
14 visual, or sensory representations of such character, or any  
15 article or instrument for obscene use, or purporting to be for  
16 obscene use or purpose; or who knowingly designs, copies,  
17 draws, photographs, poses for, writes, prints, publishes, or  
18 in any manner whatsoever manufactures or prepares any such  
19 material, matter, article, or thing of any such character; or  
20 who knowingly writes, prints, publishes, or utters, or causes  
21 to be written, printed, published, or uttered, any  
22 advertisement or notice of any kind, giving information,  
23 directly or indirectly, stating, or purporting to state,  
24 where, how, of whom, or by what means any, or what purports to  
25 be any, such material, matter, article, or thing of any such  
26 character can be purchased, obtained, or had; or who in any  
27 manner knowingly hires, employs, uses, or permits any person  
28 knowingly to do or assist in doing any act or thing mentioned  
29 above, is guilty of a misdemeanor of the first degree,  
30 punishable as provided in s. 775.082 or s. 775.083. A person  
31 who, after having been convicted of a violation of this

1 subsection, thereafter violates any of its provisions, is  
2 guilty of a felony of the third degree, punishable as provided  
3 in s. 775.082, s. 775.083, or s. 775.084.

4 (b) The knowing possession by any person of three or  
5 more identical or similar materials, matters, articles, or  
6 things coming within the provisions of paragraph (a) is prima  
7 facie evidence of the violation of said paragraph.

8 (c) Any person who commits a violation of paragraph  
9 (a) or subsection (2) which is based on materials that depict  
10 a minor engaged in any act or conduct that is harmful to  
11 minors commits a felony of the third degree, punishable as  
12 provided in s. 775.082, s. 775.083, or s. 775.084.

13 (d) A person's ignorance of a minor's age, a minor's  
14 misrepresentation of his or her age, a bona fide belief of a  
15 minor's age, or a minor's consent may not be raised as a  
16 defense in a prosecution for one or more violations of  
17 paragraph (a) or subsection (2).

18 (2) A person who knowingly has in his or her  
19 possession, custody, or control any obscene book, magazine,  
20 periodical, pamphlet, newspaper, comic book, story paper,  
21 written or printed story or article, writing, paper, card,  
22 picture, drawing, photograph, motion picture film, film, any  
23 sticker, decal, emblem or other device attached to a motor  
24 vehicle containing obscene descriptions, photographs, or  
25 depictions, any figure, image, phonograph record, or wire or  
26 tape or other recording, or any written, printed, or recorded  
27 matter of any such character which may or may not require  
28 mechanical or other means to be transmuted into auditory,  
29 visual, or sensory representations of such character, or any  
30 article or instrument for obscene use, or purporting to be for  
31 obscene use or purpose, without intent to sell, lend, give

1 away, distribute, transmit, show, transmute, or advertise the  
2 same, commits ~~is guilty of~~ a misdemeanor of the second degree,  
3 punishable as provided in s. 775.082 or s. 775.083. A person  
4 who, after having been convicted of violating this subsection,  
5 thereafter violates any of its provisions commits ~~is guilty of~~  
6 a misdemeanor of the first degree, punishable as provided in  
7 s. 775.082 or s. 775.083. In any prosecution for such  
8 possession, it ~~is shall~~ not ~~be~~ necessary to allege or prove  
9 the absence of such intent.

10 Section 3. Section 847.012, Florida Statutes, is  
11 amended to read:

12 847.012 Prohibition of sale or other distribution of  
13 harmful materials to persons under 18 years of age; penalty.--

14 (1) As used in this section, "knowingly" means having  
15 the general knowledge of, reason to know, or a belief or  
16 ground for belief which warrants further inspection or inquiry  
17 of both:

18 (a) The character and content of any material  
19 described in this section ~~herein~~ which is reasonably  
20 susceptible of examination by the defendant; ~~and~~

21 (b) The age of the minor; ~~however, an honest mistake~~  
22 ~~shall constitute an excuse from liability hereunder if the~~  
23 ~~defendant made a reasonable bona fide attempt to ascertain the~~  
24 ~~true age of such minor.~~

25 (2) A person's ignorance of a minor's age, a minor's  
26 misrepresentation of his or her age, a bona fide belief of a  
27 minor's age, or a minor's consent may not be raised as a  
28 defense in a prosecution for a violation of subsection (4).

29 ~~(3)(2) A~~ A ~~It is unlawful for any person may not~~  
30 knowingly ~~to~~ sell, rent, or loan for monetary consideration to  
31 a minor:

1 (a) Any picture, photograph, drawing, sculpture,  
2 motion picture film, videocassette, or similar visual  
3 representation or image of a person or portion of the human  
4 body which depicts nudity or sexual conduct, sexual  
5 excitement, sexual battery, bestiality, or sadomasochistic  
6 abuse and which is harmful to minors;~~7~~ or

7 (b) Any book, pamphlet, magazine, printed matter  
8 however reproduced, or sound recording that ~~which~~ contains any  
9 matter defined in s. 847.001, explicit and detailed verbal  
10 descriptions or narrative accounts of sexual excitement, or  
11 sexual conduct and that ~~which~~ is harmful to minors.

12 (4) A person may not knowingly use a minor in the  
13 production of any material described in paragraph (3)(a) or  
14 paragraph (3)(b), regardless of whether the material is  
15 intended for distribution to minors or is actually distributed  
16 to minors.

17 ~~(5)(3)~~ Any person violating any provision of this  
18 section commits ~~is guilty of~~ a felony of the third degree,  
19 punishable as provided in s. 775.082, s. 775.083, or s.  
20 775.084.

21 ~~(6)(4)~~ Every act, thing, or transaction forbidden by  
22 this section constitutes a separate offense and is punishable  
23 as such.

24 ~~(7)(5)~~(a) The circuit court has jurisdiction to enjoin  
25 a violation of this section upon complaint filed by the state  
26 attorney in the name of the state upon the relation of such  
27 state attorney.

28 (b) After the filing of such a complaint, the judge to  
29 whom it is presented may grant an order restraining the person  
30 complained of until final hearing or further order of the  
31 court. Whenever the relator state attorney requests a judge of

1 such court to set a hearing upon an application for such a  
2 restraining order, such judge shall set such hearing for a  
3 time within 3 days after the making of such request. ~~No~~ Such  
4 order may not ~~shall~~ be made unless the ~~such~~ judge is satisfied  
5 that sufficient notice of the application therefor has been  
6 given to the party restrained of the time when and place where  
7 the application for such restraining order is to be made.

8 (c) The person sought to be enjoined is ~~shall be~~  
9 entitled to a trial of the issues within 1 day after joinder  
10 of issue, and a decision shall be rendered by the court within  
11 2 days after ~~of~~ the conclusion of the trial.

12 (d) ~~If in the event that~~ a final decree of injunction  
13 is entered, it must ~~shall~~ contain a provision directing the  
14 defendant having the possession, custody, or control of the  
15 materials, matters, articles, or things affected by the  
16 injunction to surrender the same to the sheriff and requiring  
17 the sheriff to seize and destroy the same. The sheriff shall  
18 file a certificate of her or his compliance.

19 (e) In any action brought as provided in this section,  
20 ~~a~~ ~~no~~ bond or undertaking may not ~~shall~~ be required of the  
21 state or the state attorney before the issuance of a  
22 restraining order provided for by paragraph (b), and ~~there~~  
23 ~~shall be no liability on the part of~~ the state or the state  
24 attorney may not be held liable for costs or for damages  
25 sustained by reason of the ~~such~~ restraining order in any case  
26 where a final decree is rendered in favor of the person sought  
27 to be enjoined.

28 (f) Every person who has possession, custody, or  
29 control of, or otherwise deals with, any of the materials,  
30 matters, articles, or things described in this section, after  
31 the service upon her or him of a summons and complaint in an

1 action for injunction brought under this section, is  
2 chargeable with knowledge of the contents and character  
3 thereof.

4 ~~(8)(6)~~ The several sheriffs and state attorneys shall  
5 vigorously enforce this section within their respective  
6 jurisdictions.

7 ~~(9)(7)~~ This section does not apply to the exhibition  
8 of motion pictures, shows, presentations, or other  
9 representations regulated under the provisions of s. 847.013.

10 Section 4. Section 847.013, Florida Statutes, is  
11 amended to read:

12 847.013 Exposing minors to or using minors in the  
13 production of harmful motion pictures, exhibitions, shows,  
14 presentations, or representations.--

15 (1) "KNOWINGLY" DEFINED.--As used in this section  
16 "knowingly" means having general knowledge of, reason to know,  
17 or a belief or ground for belief which warrants further  
18 inspection or inquiry of both:

19 (a) The character and content of any motion picture  
20 described herein which is reasonably susceptible of  
21 examination by the defendant, or the character of any  
22 exhibition, presentation, representation, or show described  
23 herein, other than a motion picture show, which is reasonably  
24 susceptible of being ascertained by the defendant, and

25 (b) The age of the minor; ~~however, an honest mistake~~  
26 ~~shall constitute an excuse from liability hereunder if the~~  
27 ~~defendant made a reasonable bona fide attempt to ascertain the~~  
28 ~~true age of such minor.~~

29 (2) MINOR'S AGE.--A person's ignorance of a minor's  
30 age, a minor's misrepresentation of his or her age, a bona  
31 fide belief of a minor's age, or a minor's consent may not be



1 raised as a defense in a prosecution for a violation of s.  
2 847.012 or s. 847.013.

3 ~~(3)(2)~~ OFFENSES AND PENALTIES.--

4 (a) It is unlawful for any person knowingly to exhibit  
5 for a monetary consideration to a minor or knowingly to sell  
6 or rent a videotape of a motion picture to a minor or  
7 knowingly sell to a minor an admission ticket or pass or  
8 knowingly admit a minor for a monetary consideration to  
9 premises whereon there is exhibited a motion picture,  
10 exhibition, show, representation, or other presentation which,  
11 in whole or in part, depicts nudity, sexual conduct, sexual  
12 excitement, sexual battery, bestiality, or sadomasochistic  
13 abuse and which is harmful to minors.

14 (b) It is unlawful for any person knowingly to rent or  
15 sell, or loan to a minor for monetary consideration, a  
16 videocassette or a videotape of a motion picture, or similar  
17 presentation, which, in whole or in part, depicts nudity,  
18 sexual conduct, sexual excitement, sexual battery, bestiality,  
19 or sadomasochistic abuse and which is harmful to minors.

20 (c) The provisions of paragraph (a) do not apply to a  
21 minor when the minor is accompanied by his or her parents or  
22 either of them.

23 (d) It is unlawful for any minor to falsely represent  
24 to the owner of any premises mentioned in paragraph (a), or to  
25 the owner's agent, or to any person mentioned in paragraph  
26 (b), that such minor is 17 years of age or older, with the  
27 intent to procure such minor's admission to such premises, or  
28 such minor's purchase or rental of a videotape, for a monetary  
29 consideration.

30 (e) It is unlawful for any person to knowingly make a  
31 false representation to the owner of any premises mentioned in

1 paragraph (a), or to the owner's agent, or to any person  
2 mentioned in paragraph (b), that he or she is the parent of  
3 any minor or that any minor is 17 years of age or older, with  
4 intent to procure such minor's admission to such premises or  
5 to aid such minor in procuring admission thereto, or to aid or  
6 enable such minor's purchase or rental of a videotape, for a  
7 monetary consideration.

8 (f) A person may not knowingly use a minor in the  
9 production of any material whereon there is exhibited a motion  
10 picture, exhibition, show, representation, or other  
11 presentation that, in whole or in part, depicts nudity, sexual  
12 conduct, sexual excitement, sexual battery, bestiality, or  
13 sadomasochistic abuse and that is harmful to minors.

14 ~~(g)(f)~~ A violation of any provision of this subsection  
15 constitutes a misdemeanor of the first degree, punishable as  
16 provided in s. 775.082 or s. 775.083.

17 ~~(4)(3)~~ INJUNCTIVE PROCEEDINGS.--

18 (a) The circuit court has jurisdiction to enjoin a  
19 threatened violation of subsection (2) upon complaint filed by  
20 the state attorney in the name of the state upon the relation  
21 of such state attorney.

22 (b) After the filing of such a complaint, the judge to  
23 whom it is presented may grant an order restraining the person  
24 or persons complained of until final hearing or further order  
25 of the court. Whenever the relator requests a judge of such  
26 court to set a hearing upon an application for such a  
27 restraining order, such judge shall set such hearing for a  
28 time within 3 days after the making of such request. No such  
29 order shall be made unless such judge is satisfied that  
30 sufficient notice of the application therefor has been given  
31 to the person or persons restrained of the time when and place

1 | where the application for such restraining order is to be  
2 | heard. However, such notice shall be dispensed with when it  
3 | is manifest to such judge, from the allegations of a sworn  
4 | complaint or independent affidavit, sworn to by the relator or  
5 | by some person associated with him or her in the field of law  
6 | enforcement and filed by the relator, that the apprehended  
7 | violation will be committed if an immediate remedy is not  
8 | afforded.

9 |         (c) The person or persons sought to be enjoined shall  
10 | be entitled to a trial of the issues within 1 day after  
11 | joinder of issue, and a decision shall be rendered by the  
12 | court within 2 days after the conclusion of the trial.

13 |         (d) In any action brought as provided in this section,  
14 | no bond or undertaking shall be required of the state or the  
15 | relator state attorney before the issuance of a restraining  
16 | order provided for by this section, and there shall be no  
17 | liability on the part of the state or the relator state  
18 | attorney for costs or damages sustained by reason of such  
19 | restraining order in any case in which a final decree is  
20 | rendered in favor of the person or persons sought to be  
21 | enjoined.

22 |         (e) Every person who has possession, custody, or  
23 | control of, or otherwise deals with, any motion picture,  
24 | exhibition, show, representation, or presentation described in  
25 | this section, after the service upon him or her of a summons  
26 | and complaint in an action for injunction brought under this  
27 | section, is chargeable with knowledge of the contents or  
28 | character thereof.

29 |         ~~(5)~~(4) LEGISLATIVE INTENT.--In order to make the  
30 | application and enforcement of this section uniform throughout  
31 | the state, it is the intent of the Legislature to preempt the

1 field, to the exclusion of counties and municipalities,  
2 insofar as it concerns exposing persons under 17 years of age  
3 to harmful motion pictures, exhibitions, shows,  
4 representations, ~~and~~ presentations, and commercial or sexual  
5 exploitation. To that end, it is hereby declared that every  
6 county ordinance and every municipal ordinance adopted prior  
7 to July 1, 1969, and relating to such subject shall stand  
8 abrogated and unenforceable on and after such date and that no  
9 county, municipality, or consolidated county-municipal  
10 government shall have the power to adopt any ordinance  
11 relating to that subject on or after such effective date.

12 Section 5. Paragraph (f) of subsection (3) of section  
13 921.0022, Florida Statutes, is amended to read:

14 921.0022 Criminal Punishment Code; offense severity  
15 ranking chart.--

16 (3) OFFENSE SEVERITY RANKING CHART

18 Florida	Felony	
19 Statute	Degree	Description
		(f) LEVEL 6
23 316.193(2)(b)	3rd	Felony DUI, 4th or subsequent 24 conviction.
25 499.0051(3)	2nd	Forgery of pedigree papers.
26 499.0051(4)	2nd	Purchase or receipt of legend 27 drug from unauthorized person.
28 499.0051(5)	2nd	Sale of legend drug to 29 unauthorized person.
30 775.0875(1)	3rd	Taking firearm from law 31 enforcement officer.

1	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
2			without intent to kill.
3	784.021(1)(b)	3rd	Aggravated assault; intent to
4			commit felony.
5	784.041	3rd	Felony battery.
6	784.048(3)	3rd	Aggravated stalking; credible
7			threat.
8	784.048(5)	3rd	Aggravated stalking of person
9			under 16.
10	784.07(2)(c)	2nd	Aggravated assault on law
11			enforcement officer.
12	784.074(1)(b)	2nd	Aggravated assault on sexually
13			violent predators facility staff.
14	784.08(2)(b)	2nd	Aggravated assault on a person 65
15			years of age or older.
16	784.081(2)	2nd	Aggravated assault on specified
17			official or employee.
18	784.082(2)	2nd	Aggravated assault by detained
19			person on visitor or other
20			detainee.
21	784.083(2)	2nd	Aggravated assault on code
22			inspector.
23	787.02(2)	3rd	False imprisonment; restraining
24			with purpose other than those in
25			s. 787.01.
26	790.115(2)(d)	2nd	Discharging firearm or weapon on
27			school property.
28	790.161(2)	2nd	Make, possess, or throw
29			destructive device with intent to
30			do bodily harm or damage
31			property.

1	790.164(1)	2nd	False report of deadly explosive,
2			weapon of mass destruction, or
3			act of arson or violence to state
4			property.
5	790.19	2nd	Shooting or throwing deadly
6			missiles into dwellings, vessels,
7			or vehicles.
8	794.011(8)(a)	3rd	Solicitation of minor to
9			participate in sexual activity by
10			custodial adult.
11	794.05(1)	2nd	Unlawful sexual activity with
12			specified minor.
13	800.04(5)(d)	3rd	Lewd or lascivious molestation;
14			victim 12 years of age or older
15			but less than 16 years; offender
16			less than 18 years.
17	800.04(6)(b)	2nd	Lewd or lascivious conduct;
18			offender 18 years of age or
19			older.
20	806.031(2)	2nd	Arson resulting in great bodily
21			harm to firefighter or any other
22			person.
23	810.02(3)(c)	2nd	Burglary of occupied structure;
24			unarmed; no assault or battery.
25	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more,
26			but less than \$100,000, grand
27			theft in 2nd degree.
28	812.015(9)	2nd	Retail theft; property stolen
29			\$300 or more; second or
30			subsequent conviction.
31			

1	812.13(2)(c)	2nd	Robbery, no firearm or other
2			weapon (strong-arm robbery).
3	817.034(4)(a)1.	1st	Communications fraud, value
4			greater than \$50,000.
5	817.4821(5)	2nd	Possess cloning paraphernalia
6			with intent to create cloned
7			cellular telephones.
8	825.102(1)	3rd	Abuse of an elderly person or
9			disabled adult.
10	825.102(3)(c)	3rd	Neglect of an elderly person or
11			disabled adult.
12	825.1025(3)	3rd	Lewd or lascivious molestation of
13			an elderly person or disabled
14			adult.
15	825.103(2)(c)	3rd	Exploiting an elderly person or
16			disabled adult and property is
17			valued at less than \$20,000.
18	827.03(1)	3rd	Abuse of a child.
19	827.03(3)(c)	3rd	Neglect of a child.
20	827.071(2)&(3)	2nd	Use or induce a child in a sexual
21			performance, or promote or direct
22			such performance.
23	836.05	2nd	Threats; extortion.
24	836.10	2nd	Written threats to kill or do
25			bodily injury.
26	843.12	3rd	Aids or assists person to escape.
27	<u>847.011</u>	<u>3rd</u>	<u>Distributing, offering to</u>
28			<u>distribute, or possessing with</u>
29			<u>intent to distribute obscene</u>
30			<u>materials to minors or depicting</u>
31			<u>minors.</u>

1	<u>847.012</u>	<u>3rd</u>	<u>Knowingly using a minor in the</u>
2			<u>production of obscene or sexually</u>
3			<u>explicit materials.</u>
4	847.0135(2)	3rd	Facilitates sexual conduct of or
5			with a minor or the visual
6			depiction of such conduct.
7	914.23	2nd	Retaliation against a witness,
8			victim, or informant, with bodily
9			injury.
10	944.35(3)(a)2.	3rd	Committing malicious battery upon
11			or inflicting cruel or inhuman
12			treatment on an inmate or
13			offender on community
14			supervision, resulting in great
15			bodily harm.
16	944.40	2nd	Escapes.
17	944.46	3rd	Harboring, concealing, aiding
18			escaped prisoners.
19	944.47(1)(a)5.	2nd	Introduction of contraband
20			(firearm, weapon, or explosive)
21			into correctional facility.
22	951.22(1)	3rd	Intoxicating drug, firearm, or
23			weapon introduced into county
24			facility.
25	Section 6.		This act shall take effect July 1, 2007.



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SENATE SUMMARY

Provides that it is a third-degree felony for any person to sell, distribute, transmit, advertise, or to possess with the intent to sell, distribute, transmit, or advertise certain materials to minors. Provides that it is a third-degree felony to knowingly use a minor in the production of certain materials, regardless of whether those materials are intended for distribution to minors or actually distributed to minors. Provides that it is a first-degree misdemeanor for any person to knowingly use a minor in the production of certain materials depicting certain images, representations, or acts.