

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1442

INTRODUCER: Criminal Justice Committee and Senator Dockery

SUBJECT: Exploited Children

DATE: March 6, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			CF	
3.			JU	
4.			JA	
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill would provide additional protections in civil and criminal proceedings for victims of child pornography and provide them a civil remedy as follows:

- Allows for the use of a pseudonym in court records and proceedings instead of revealing the victim's name.
- Renumbers and relocates a provision in s. 800.04(7)(b), F.S., proscribing the offense of lewd or lascivious exhibition live over a computer online service, to the computer pornography statute in s. 847.0135(5), F.S. (This is a technical restructuring; the current criminal penalties are not affected by this transfer.)
- Requires law enforcement officers who recover child pornography images during an investigation to provide these images and other identifying information to the National Center for Missing and Exploited Children, Child Victim Identification Program; request contact information back from the center for any recovered images; and provide prosecutors pursuing a prosecution for producing, possessing, or promoting child pornography with this information.

- Requires prosecutors to enter certain information into the Victims in Child Pornography Tracking Repeat Exploitation database maintained by the Office of the Attorney General.
- Creates a new state civil remedy to recover actual damages and costs for victims of child pornography who have had any portion of that abuse used in the production of child pornography images and who suffer personal or psychological injury as a result of the production, promotion, or possession of such images.
- Provides that these victims who receive damages shall be deemed to have sustained minimum damages of \$150,000.
- Allows the Office of the Attorney General to pursue these cases on behalf of child pornography victims, if requested to do so by the victim, and to seek any reasonable attorney's fees and costs.
- Allows known victims of child pornography and child victims of online sexual exploitation who suffer psychiatric or psychological injury as a direct result of the crime to be eligible to file a victim's compensation claim under ch. 960, F.S.

This bill substantially amends the following sections of the Florida Statutes: 92.56, 800.04, 960.03, 90.404, 92.565, 394.912, 409.2355, 775.082, 775.084, 775.15, 775.21, 784.048, 787.01, 787.02, 787.025, 794.065, 847.0135, 914.16, 921.0022, 921.244, 938.10, 943.0435, 943.04354, 943.0585, 943.059, 944.606, 944.607, 947.1405, 948.013, 948.03, 948.06, 948.101, 948.30, 948.31, and 948.32.

The bill creates sections 847.002, 847.01357, and 960.197 of the Florida Statutes.

II. Present Situation:

Section 92.56, F.S., provides confidential protections for sexual and child abuse victims in criminal and civil court proceedings and records, including using a pseudonym instead of the victim's name to designate the victims of sexual and child abuse.

Section 800.04(7)(b), F.S., proscribes the offense of lewd or lascivious exhibition live over a computer online service. Currently, it is a third degree felony if an offender less than 18 years of age, live over a computer online service, intentionally masturbates, lewdly or lasciviously exposes his genitals, or intentionally commits other sexual acts not involving actual contact with the victim, knowing the transmission is being viewed by a victim under 16 years. If the offender is 18 years or older, it is a second degree felony under this section.

Chapter 847, F.S., proscribes child pornography offenses, including computer pornography, and traveling to meet a minor after meeting online. The definition of "child pornography" means any image depicting a minor engaged in "sexual conduct." "Sexual conduct" includes, in part, such conduct as: deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, sexual battery, actual lewd exhibition of the genitals, and actual physical contact with clothed or unclothed genitals.

Chapter 960, F.S., is the victim assistance statute. It includes provisions making crime victims eligible to receive a crime compensation award if certain criteria is met. The definition of “crime” under this section requires a felony or misdemeanor offense be committed which results in physical injury or death to the victim. However, the definition of “victim” under this same section does allow a child under 16 years of age who is at the crime scene and experiences psychological injury because of the crime, to also be eligible to receive benefits.

According to the Child Predator Cybercrime Unit within the Office of Attorney General, the National Center for Missing and Exploited Children has identified over 30 Floridians who are victims of child pornography. The Director of the Child Predator Cybercrime Unit, Ms. Maureen Horkan, states: “These Floridians face continued victimization as the image of their sexual abuse is downloaded by collectors of child pornography in this state and around the world. Currently, under Florida law, child pornography is treated as a victimless crime; they are not notified about cases involving the downloading and distribution of the images or ever heard from regarding sentencing. In sum, these victims do not receive prosecution information, financial assistance, or more importantly, their statutorily mandated rights as victims of crime in this state.”

III. Effect of Proposed Changes:

The bill would provide additional protections in civil and criminal proceedings for victims of child pornography and provide them a civil remedy as follows.

Section 1 amends s. 92.56, F.S., to allow the use of a pseudonym in court records and proceedings instead of revealing the victim’s name.

Sections 2 and 3 make a technical change by renumbering the provision in s. 800.04(7)(b), F.S., that proscribes the offense of lewd or lascivious exhibition live over a computer online service, and relocating it to the computer pornography statute in s. 847.0135(5), F.S. The current criminal penalties are unchanged by this transfer.

Section 4 creates s. 847.002, F.S., such that it requires law enforcement officers who recover child pornography images during an investigation to provide these images and other identifying information to the National Center for Missing and Exploited Children, Child Victim Identification Program, and to request contact information back from the national center for any recovered images. Then these officers are required to provide prosecutors (who are pursuing a prosecution for producing, possessing, or promoting child pornography) with this contact information for recovered images from the national center.

This section also requires prosecutors, in every filed case involving a known child pornography victim, to enter the following information into the Victims in Child Pornography Tracking Repeat Exploitation database maintained by the Office of the Attorney General:

- case number and agency file number,
- named defendant,
- circuit court division and county,
- current court dates and case status,

- contact information for the assigned prosecutor, and
- verification that the prosecutor has a victim impact statement and will use it at sentencing.

Section 5 creates a new state civil remedy for victims of child pornography by creating s. 847.01357, F.S. Specifically, a victim of any sexual abuse crime in chs. 794, 800, 827, or 847, F.S., who has any portion of that abuse used in the production of images of child pornography and who suffers personal or psychological injury as a result of the production, promotion, or possession of such images, may sue in state court and recover actual damages and costs, including attorney's fees. The bill provides that a victim may bring an action regardless of whether the victim is now an adult.

The section further provides that such victims who receive damages shall be deemed to have sustained a minimum of \$150,000 in damages.

The bill provides any action under this new section must be filed within three years of the later of:

- the conclusion of a related criminal case;
- the notification to the victim by a member of law enforcement of the creation, possession, or promotion of pornographic images; or
- in the case of a child under 18 years, within three years after such child turns 18 years of age.

This section also prohibits defendants in these civil cases from using the defense that they did not know the victim or that they did not commit the abuse depicted in the child pornography images. Furthermore, under the bill, victims with a bona fide claim will be provided a confidential pseudonym, upon request, to be used in all legal proceedings.

Finally, this section allows the Office of the Attorney General to pursue these cases on behalf of child pornography victims, if so requested by the victim and approved by the agency. Any recovered damages will go to the victims, but the Attorney General may seek reasonable attorney's fees and costs under the bill.

Section 6 amends s. 960.03, F.S., the crimes compensation trust fund statute, to expand the definition of "crime" by including violations of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, F.S., relating to on-line sexual exploitation and child pornography. "Known victim of child pornography" is also defined as any person, while under 18 years, who was depicted in any child pornography image and who has been identified by law enforcement and whose image has been provided to the National Center for Missing and Exploited Children's Child Victim Identification Program.

Section 7 creates s. 960.197, F.S., to allow the Office of the Attorney General to award compensation for counseling and other mental health services to treat psychological injury or trauma to known victims of child pornography and to child victims of online sexual exploitation who are under 18 years of age and who suffer psychiatric or psychological injury as a direct result of the crime. (Currently, they are not eligible for compensation under the act because the trauma is not physical injury.) The section also provides that compensation is not contingent on pursuing a criminal investigation or prosecution.

Sections 8 through section 31 contain technical conforming changes to other statutes affected by the bill, including the criminal punishment code to reflect the relocation of the law proscribing lewd or lascivious exhibition over a live computer.

Section 32 provides an effective date of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows victims of child pornography to seek a civil remedy for actual damages against persons who produce, possess, or promote pornographic images of these victims. It provides minimum damages in the amount of \$150,000 for any victim who is awarded damages.

C. Government Sector Impact:

According to the Attorney General's Office, any fiscal impact resulting from the expanded data base and from assisting victims under the bill will be absorbed through the Child Predator Cybercrime Unit and the Information Technology Division within the Attorney General's Office. The bill also allows the Attorney General's Office to seek reasonable attorney's fees and costs which will help offset costs of pursuing litigation on behalf of the victims.

The Attorney General's Office also predicts that there will be an insignificant impact upon the crime compensation trust fund (approximately \$240,000) as a result of the expanded coverage for child pornography and on-line sexual exploitation victims.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Child Predator Cybercrime Unit within the Office of the Attorney General, this bill is based upon a recently enacted provision in the federal Adam Walsh Child Protection and Safety Act (Public Law 109-248, Title VII, Sec. 707) which allows child pornography victims to seek a civil remedy from persons downloading their pornographic images. If passed, states the Office of the Attorney General, this bill will allow Florida citizens who have been identified by law enforcement as victims of child pornography and who have suffered personal or psychological injury as a result of the possession and distribution of their pornographic images, to seek civil redress under Florida law.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 6, 2008:

- Narrows the potential pool of victims who will be eligible to receive crime compensation awards under ch. 960, F.S., to known victims of child pornography and child victims of online sexual exploitation (who are under 18 years of age). They must also suffer psychiatric or psychological injury as a direct result of the crime.
- Adds a provision expanding the definition of “victim” to include a person under 18 years (rather than 16 years of age) who was present at the crime scene, suffered a psychiatric or psychological injury, but who was not physically injured.
- Deletes the public records exemption from Section 1 of the bill.
- Clarifies law enforcement’s responsibilities in Section 4 of the bill.
- Clarifies the minimum damages award.
- Relocates the lewd or lascivious exhibition live over a computer offense to an existing computer pornography statute in ch. 847, F.S., rather than creating a new one in the same chapter.

B. Amendments:

None.