

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 113	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Diaz, M. and others	115 Y's	3 N's
COMPANION BILLS:	(CS/CS/SB 86)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 113 passed the House on April 4, 2013, and subsequently passed the Senate on April 16, 2013.

Florida has multiple statutes that prohibit persons from transmitting, selling, or displaying to minors material that is harmful to minors. However, there are currently no statutes prohibiting an adult from displaying or giving minors (without monetary consideration) material that is harmful to minors.

The bill amends s. 847.012, F.S., to create a new offense making it a third degree felony for an adult to knowingly distribute to a minor on school property or post on school property any of the following material:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The bill provides an exception for the distribution or posting of school-approved instructional materials by specified school personnel.

“School property” is defined as the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

The Criminal Justice Impact Conference met February 27, 2013, and determined the bill may have an insignificant negative impact on state prison beds.

The bill was approved by the Governor on May 30, 2013, ch. 2013-75, L.O.F., and will become effective on October 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Regulation of Obscene Materials

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. However, the Supreme Court of the United States has found that obscene materials are not protected by the First Amendment.¹

Section 847.001(10), F.S., defines “obscene” as the status of material that:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;² and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Florida has multiple statutes prohibiting the possession, exhibition, and dissemination of obscene materials to adults and children.³ One specific to children is s. 847.0133, F.S., which makes it a third degree felony⁴ to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor.

Regulation of Materials Harmful to Minors

The definition of materials that are “harmful to minors” is similar to but more inclusive than that of “obscene” materials. Section 847.001(6), F.S., defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity,⁵ sexual conduct,⁶ or sexual excitement⁷ when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.⁸

Florida has multiple statutes that prohibit persons from transmitting, selling, or displaying to minors material that is harmful to minors. A description of these statutes is below.

Transmission of Materials Harmful to Minors

Section 847.0138, F.S., makes it a third degree felony for a person to know or believe they are transmitting an image, information, or data that is “harmful to minors” to a specific individual known by the defendant to be a minor.⁹

¹ *Miller v. California*, 413 U.S. 15 (1973).

² Section 847.001, F.S., defines “sexual conduct” as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or if such person is a female, breast with the intent to arouse, or gratify the sexual desire of either party; or any act or conduct which constituted sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

³ *See, e.g.*, s. 847.011, F.S.

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 847.001(9), F.S., defines “nudity” as the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

⁶ *Supra* note 2.

⁷ Section 847.001(17), F.S., defines “sexual excitement” as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

⁸ Section 847.001, F.S.

Selling, Renting, or Loaning Materials Harmful to Minors

Section 847.012(3)(a) and (b), F.S., makes it a third degree felony for a person to knowingly¹⁰ sell, rent, or loan for monetary consideration to a minor:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.¹¹

Exposing Minors to Harmful Motion Pictures, Shows, Etc.

Section 847.013(3), F.S., makes it a first degree misdemeanor¹² for a person to knowingly¹³ exhibit for monetary consideration to a minor; knowingly sell or rent a videotape of a motion picture to a minor; knowingly sell to a minor an admission ticket or pass; or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

Retail Display of Materials Harmful to Minors

Section 847.0125(2)(a), F.S., makes it a first degree misdemeanor for a person who offers for sale in a retail establishment that is open to the general public any book, magazine, or other printed material, *the cover of which depicts material which is harmful to minors*, to knowingly exhibit such book, magazine, or material in such a way that it is on open display to, or within the convenient reach of, minors. The statute requires such items to be displayed, either individually or collectively, behind an opaque covering which conceals the book, magazine, or other printed material.¹⁴

The statute also makes it a first degree misdemeanor for a person who offers for sale in a retail establishment that is open to the general public any book, magazine, or other printed material, *the content of which exploits, is devoted to, or is principally made up of descriptions or depictions of material which is harmful to minors*, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is within the convenient reach of minors.¹⁵

There are currently no statutes prohibiting an adult from displaying or giving minors (without monetary consideration) material that is harmful to minors.¹⁶

⁹ “Known by the defendant to be a minor” means that the defendant had actual knowledge or believed that the recipient of the communication was a minor. Section 847.0138(1)(a), F.S.

¹⁰ “Knowingly” means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both: (1) the character and content of any motion picture described herein which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation, or show described herein, other than a motion picture show, which is reasonably susceptible of being ascertained by the defendant; and (2) the age of the minor. Section 847.013(1), F.S.

¹¹ A person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent may not be raised as a defense in a prosecution for a violation of s. 847.012, F.S.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹³ *Supra* note 10.

¹⁴ Section 847.0125(2)(a), F.S.

¹⁵ Section 847.0125(2)(b), F.S.

¹⁶ There may be circumstances under which such activity could be charged as a violation of s. 827.04(1), F.S., contributing to the delinquency of a child, which is a first degree misdemeanor.

Effect of the Bill

The bill amends s. 847.012, F.S., to add a new subsection (5), that makes it a third degree felony for an adult to knowingly distribute to a minor on school property or post on school property any of the following material:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The bill provides an exception for the distribution or posting of school-approved instructional materials that by design serve as a major tool for assisting in the instruction of a subject or course by school officers, instructional personnel, administrative personnel, school volunteers, educational support employees, or managers, as defined in s. 1012.01, F.S.

“School property” is defined as the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures

The Criminal Justice Impact Conference met February 27, 2013, and determined the bill will have an insignificant negative impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.