

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 Committee on Education

BILL: SB 86

INTRODUCER: Senator Flores

SUBJECT: Distribution of materials harmful to minors

DATE: February 18, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides that it is a third-degree felony for an adult to knowingly distribute material harmful to a minor or to post materials harmful to a minor on public and private school property. The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, secondary school, or career center.

The bill provides an effective date of October 1, 2013.

This bill amends section 847.012 of the Florida Statutes.

II. Present Situation:

Definition of “Harmful to Minors”

Currently, the law provides for a three-pronged test to determine whether material is harmful to minors. Florida law defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement 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.¹

“Obscene Materials”

Chapter 847, F.S., addresses the regulation of obscenity and provides several definitions that are used in the chapter. An adult is defined as a person of at least 18 years of age.² A minor, likewise, is considered to be someone who is under the age of 18 years.³ The term “obscene” is defined as the status of materials which:

- 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;⁴ and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.⁵

Currently, it is a first-degree misdemeanor⁶ for a person to knowingly distribute, sell, lend, give away, transmit, transmute, or show, certain obscene materials.⁷ It is a second-degree misdemeanor⁸ for a person to knowingly have certain obscene materials in one’s possession, custody, or control.⁹

Selling or Distributing Harmful Materials to Minors

Current law provides that it is a third-degree felony¹⁰ to knowingly sell, rent, or loan for monetary consideration to a minor:¹¹

- 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

¹ s. 847.001(6), F.S.

² s. 847.001(1), F.S.

³ s. 847.001(8), F.S.

⁴ s. 847.001(16), 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, public area, buttocks, or, if such a person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstances constitute “sexual conduct.”

⁵ s. 847.001(10), F.S.

⁶ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year, and a fine not exceeding \$1,000 may be imposed. *See* ss. 775.082 and 775.083, F.S.

⁷ s. 847.011(1)(a), F.S. However, it is a third-degree felony if a violation is based on materials that depict a minor engaged in any act or conduct that is harmful to minors. *See* s. 847.011(1)(c), F.S.

⁸ A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, and a fine not exceeding \$500 may be imposed. *See* ss. 775.082 and 775.083, F.S.

⁹ s. 847.011(2), F.S. However, it is a third-degree felony if a violation is based on materials that depict a minor engaged in any act or conduct that is harmful to minors. *See* s. 847.011(1)(c), F.S.

¹⁰ A third-degree felony is punishable by a state prison sentence not exceeding five years, and a fine not exceeding \$5,000 may be imposed. *See* ss. 775.082 and 775.083, F.S.

¹¹ s. 847.012(5), F.S.

- 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 term “knowingly” is defined as having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- The character and content of any material (described above) which is reasonably susceptible of examination by the defendant; and
- The age of the minor.¹²

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.¹³

III. Effect of Proposed Changes:

The bill makes it a third degree felony for an adult to knowingly distribute to a minor, or to post on school property, any of the materials described in current s. 847.012(3), F.S. This includes material harmful to minors in any format: pictures, photographs, drawings, sculptures, motion picture films, videocassettes, similar visual representations or images, books, pamphlets, magazines, printed matter however reproduced, or sound recordings. Sale of material harmful to minors to a minor at any location is already prohibited by s. 847.012(3), F.S.

The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, secondary school, or career center.¹⁴

As a third degree felony, this new offense would be punishable by up to five years in prison and a \$5,000 fine.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² s. 847.012(1), F.S.

¹³ s. 847.012(2), F.S.

¹⁴ Section 1001.44, F.S., describes a “career center” as an “educational institution offering terminal courses of a technical nature, and courses for out-of-school youth and adults.” It is part of the district school system.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates an additional criminal offense. The Criminal Justice Impact Conference has determined that the bill would create an insignificant prison bed impact due to low volume.¹⁵

VI. Technical Deficiencies:

It is unclear whether the definition of “school property,” as used in this bill, includes all educational facilities. Combination schools are not mentioned specifically, while all other schools are.

Section 1001.43(5), F.S., states that district school boards may adopt policies which govern community use of school facilities and the distribution and posting of promotional materials and literature. Due to the prohibitions in the bill constituting a third degree felony, district school boards may need to update school board policies to reflect provisions of this bill.

VII. Related Issues:

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁵ Office of Economic and Demographic Research. Telephone conversation, February 5, 2013.