

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 Criminal Justice

BILL: SB 1132

INTRODUCER: Senator Abruzzo

SUBJECT: Transmission of Pornography

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			FP	

I. Summary:

SB 1132 amends s. 847.0137, F.S., to provide that each act of sending or delivering child pornography is a separate third degree felony offense. The bill makes conforming changes to ss. 775.0847(2) and 856.022(1), F.S.

II. Present Situation:

Section s. 847.0137, F.S., criminalizes as third degree felony offenses, the transmissions of child pornography by electronic device or equipment. These offenses are cumulative to existing offenses under ss. 847.012 and 847.0133, F.S.,¹ and arise if a person:

- In this state, knowingly transmits² child pornography³ to another person in this state or in another jurisdiction.
- In any jurisdiction other than this state, knowingly or reasonably should have known transmits, an image harmful to minors to a known minor or a person believed to be a minor in this state.

Section 847.0137(4), F.S., specifies that this section may not be construed to prohibit prosecution of the unlawful conduct under this section under any other section that may provide for even greater penalties. Subsection (5) establishes Florida's jurisdiction over the crimes specified in this section whether or not the violator lives or transmits in or outside of Florida.

¹ Section 847.012, F.S., relates to sale or other distribution of harmful materials to a person under 18 years of age and includes representations. Section 847.0133, F.S., in part, prohibits the transmission of obscene material to a minor.

² Section 847.0137(1)(b), F.S., defines "transmit" as the act of sending and causing to be delivered an image, information, or data from one or more persons or places to one or more other persons or places over or through any medium, including the Internet, by use of any electronic equipment or device.

³ Section 847.001 defines "child pornography" as any image depicting a minor engaged in sexual conduct.

These offenses are not applicable to scenarios involving receipt of “subscription-based transmissions” from list servers. A list server is a type of on-line bulletin board to which persons can subscribe. The subscriber can post information or a question which would then be e-mailed to all other subscribers. Any subscriber could then respond to all subscribers on the list, or limit their response. The subscriber has little or no control over what arrives on their computer.

III. Effect of Proposed Changes:

The bill amends s. 847.0137, F.S., to provide that each act of sending or delivering child pornography is a separate third degree felony offense. The bill makes conforming changes to ss. 775.0847(2) and 856.022(1), F.S.

The bill has an effective date of October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Although numerous First Amendment challenges have been made to government regulation of pornography, the United States Supreme Court has definitively ruled that the First Amendment does not attach to the dissemination of child pornography. “[T]he use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. That judgment, we think, easily passes muster under the First Amendment.”⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁴ New York v. Ferber, 458 U.S. 747, 756-757 (1982). In Ferber, the Court upheld as a compelling state interest protection of the physical and psychological well-being of children.

C. Government Sector Impact:

The Criminal Justice Impact Conference found that there was an indeterminate impact on prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 847.0137, 775.0847 and 856.022.

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

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

None.

B. Amendments:

None.