

By Senator Abruzzo

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1 A bill to be entitled
2 An act relating to transmission of pornography;
3 amending s. 847.0137, F.S.; providing that each act of
4 sending or delivering pornography is a separate
5 offense; reenacting ss. 775.0847(2) and 856.022(1),
6 F.S., relating to reclassification of certain offenses
7 and loitering or prowling by certain offenders,
8 respectively, to incorporate the amendment to s.
9 847.0137, F.S., in references thereto; providing an
10 effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Section 847.0137, Florida Statutes, is amended
15 to read:

16 847.0137 Transmission of pornography by electronic device
17 or equipment prohibited; penalties.—

18 (1) For purposes of this section, the term:

19 (a) "Minor" means any person less than 18 years of age.

20 (b) "Transmit" means the act of sending and causing to be
21 delivered an ~~any~~ image, information, or data from one or more
22 persons or places to one or more other persons or places over or
23 through any medium, including the Internet, by use of any
24 electronic equipment or device.

25 (2) Notwithstanding ss. 847.012 and 847.0133, any person in
26 this state who knew or reasonably should have known that he or
27 she was transmitting child pornography, as defined in s.
28 847.001, to another person in this state or in another
29 jurisdiction commits a felony of the third degree, punishable as

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30 provided in s. 775.082, s. 775.083, or s. 775.084.

31 (3) Notwithstanding ss. 847.012 and 847.0133, any person in
32 any jurisdiction other than this state who knew or reasonably
33 should have known that he or she was transmitting child
34 pornography, as defined in s. 847.001, to any person in this
35 state commits a felony of the third degree, punishable as
36 provided in s. 775.082, s. 775.083, or s. 775.084.

37 (4) This section may ~~shall~~ not be construed to prohibit
38 prosecution of a person in this state or another jurisdiction
39 for a violation of any law of this state, including a law
40 providing for greater penalties than prescribed in this section,
41 for the transmission of child pornography, as defined in s.
42 847.001, to any person in this state.

43 (5) A person is subject to prosecution in this state
44 pursuant to chapter 910 for any act or conduct proscribed by
45 this section, including a person in a jurisdiction other than
46 this state, if the act or conduct violates subsection (3).

47 (6) For purposes of this section, each act of sending or
48 causing to be delivered an image, information, or data is a
49 separate offense.

50
51 ~~The provisions of~~ This section does ~~de~~ not apply to
52 subscription-based transmissions such as list servers.

53 Section 2. For the purpose of incorporating the amendment
54 made by this act to section 847.0137, Florida Statutes, in a
55 reference thereto, subsection (2) of section 775.0847, Florida
56 Statutes, is reenacted to read:

57 775.0847 Possession or promotion of certain images of child
58 pornography; reclassification.-

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59 (2) A violation of s. 827.071, s. 847.0135, s. 847.0137, or
60 s. 847.0138 shall be reclassified to the next higher degree as
61 provided in subsection (3) if:

62 (a) The offender possesses 10 or more images of any form of
63 child pornography regardless of content; and

64 (b) The content of at least one image contains one or more
65 of the following:

66 1. A child who is younger than the age of 5.

67 2. Sadomasochistic abuse involving a child.

68 3. Sexual battery involving a child.

69 4. Sexual bestiality involving a child.

70 5. Any movie involving a child, regardless of length and
71 regardless of whether the movie contains sound.

72 Section 3. For the purpose of incorporating the amendment
73 made by this act to section 847.0137, Florida Statutes, in a
74 reference thereto, subsection (1) of section 856.022, Florida
75 Statutes, is reenacted to read:

76 856.022 Loitering or prowling by certain offenders in close
77 proximity to children; penalty.—

78 (1) Except as provided in subsection (2), this section
79 applies to a person convicted of committing, or attempting,
80 soliciting, or conspiring to commit, any of the criminal
81 offenses proscribed in the following statutes in this state or
82 similar offenses in another jurisdiction against a victim who
83 was under 18 years of age at the time of the offense: s. 787.01,
84 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
85 the offender was not the victim's parent or guardian; s.
86 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;
87 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.

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88 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
89 847.0137; s. 847.0138; s. 847.0145; s. 985.701(1); or any
90 similar offense committed in this state which has been
91 redesignated from a former statute number to one of those listed
92 in this subsection, if the person has not received a pardon for
93 any felony or similar law of another jurisdiction necessary for
94 the operation of this subsection and a conviction of a felony or
95 similar law of another jurisdiction necessary for the operation
96 of this subsection has not been set aside in any postconviction
97 proceeding.

98 Section 4. This act shall take effect October 1, 2015.