

1 A bill to be entitled
 2 An act relating to transmission of pornography;
 3 amending ss. 847.001 and 847.0135, F.S.; revising
 4 terminology; amending s. 847.0137, F.S.; revising
 5 terminology; providing that each act of sending or
 6 delivering child pornography is a separate offense;
 7 reenacting ss. 775.0847(2) and 856.022(1), F.S.,
 8 relating to reclassification of certain offenses and
 9 loitering or prowling by certain offenders,
 10 respectively, to incorporate the amendment made by the
 11 act to s. 847.0137, F.S., in references thereto;
 12 providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Subsections (3) and (8) of section 847.001,
 17 Florida Statutes, are amended to read:

18 847.001 Definitions.—As used in this chapter, the term:

19 (3) "Child pornography" means an ~~any~~ image depicting a
 20 minor engaged in sexual conduct.

21 (8) "Minor" means a ~~any~~ person under the age of 18 years.

22 Section 2. Subsection (2) of section 847.0135, Florida
 23 Statutes, is amended to read:

24 847.0135 Computer pornography; prohibited computer usage;
 25 traveling to meet minor; penalties.—

26 (2) COMPUTER PORNOGRAPHY.—A person who:

27 (a) Knowingly compiles, enters into, or transmits by use
28 of computer;

29 (b) Makes, prints, publishes, or reproduces by other
30 computerized means;

31 (c) Knowingly causes or allows to be entered into or
32 transmitted by use of computer; or

33 (d) Buys, sells, receives, exchanges, or disseminates,
34
35 a ~~any~~ notice, statement, or advertisement of a ~~any~~ minor's name,
36 telephone number, place of residence, physical characteristics,
37 or other descriptive or identifying information for purposes of
38 facilitating, encouraging, offering, or soliciting sexual
39 conduct of or with a ~~any~~ minor, or the visual depiction of such
40 conduct, commits a felony of the third degree, punishable as
41 provided in s. 775.082, s. 775.083, or s. 775.084. The fact that
42 an undercover operative or law enforcement officer was involved
43 in the detection and investigation of an offense under this
44 section shall not constitute a defense to a prosecution under
45 this section.

46 Section 3. Section 847.0137, Florida Statutes, is amended
47 to read:

48 847.0137 Transmission of pornography by electronic device
49 or equipment prohibited; penalties.—

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

51 (a) "Minor" or "child" means a ~~any~~ person less than 18
52 years of age.

53 (b) "Transmit" means the act of sending and causing to be
54 delivered an ~~any~~ image, information, or data from one or more
55 persons or places to one or more other persons or places over or
56 through any medium, including the Internet, by use of any
57 electronic equipment or device. Each act of sending and causing
58 to be delivered such image, information, or data is a separate
59 offense.

60 (2) Notwithstanding ss. 847.012 and 847.0133, a ~~any~~ person
61 in this state who knew or reasonably should have known that he
62 or she was transmitting child pornography, as defined in s.
63 847.001, to another person in this state or in another
64 jurisdiction commits a felony of the third degree, punishable as
65 provided in s. 775.082, s. 775.083, or s. 775.084.

66 (3) Notwithstanding ss. 847.012 and 847.0133, a ~~any~~ person
67 in any jurisdiction other than this state who knew or reasonably
68 should have known that he or she was transmitting child
69 pornography, as defined in s. 847.001, to a ~~any~~ person in this
70 state commits a felony of the third degree, punishable as
71 provided in s. 775.082, s. 775.083, or s. 775.084.

72 (4) This section may ~~shall~~ not be construed to prohibit
73 prosecution of a person in this state or another jurisdiction
74 for a violation of any law of this state, including a law
75 providing for greater penalties than prescribed in this section,
76 for the transmission of child pornography, as defined in s.
77 847.001, to a ~~any~~ person in this state.

78 (5) A person is subject to prosecution in this state

79 | pursuant to chapter 910 for an ~~any~~ act or conduct proscribed by
 80 | this section, including a person in a jurisdiction other than
 81 | this state, if the act or conduct violates subsection (3).

82 | (6) ~~The provisions of~~ This section does ~~de~~ not apply to
 83 | subscription-based transmissions such as list servers.

84 | Section 4. For the purpose of incorporating the amendment
 85 | made by this act to section 847.0137, Florida Statutes, in a
 86 | reference thereto, subsection (2) of section 775.0847, Florida
 87 | Statutes, is reenacted to read:

88 | 775.0847 Possession or promotion of certain images of
 89 | child pornography; reclassification.—

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

93 | (a) The offender possesses 10 or more images of any form
 94 | of child pornography regardless of content; and

95 | (b) The content of at least one image contains one or more
 96 | of the following:

- 97 | 1. A child who is younger than the age of 5.
- 98 | 2. Sodomasochistic abuse involving a child.
- 99 | 3. Sexual battery involving a child.
- 100 | 4. Sexual bestiality involving a child.
- 101 | 5. Any movie involving a child, regardless of length and
 102 | regardless of whether the movie contains sound.

103 | Section 5. For the purpose of incorporating the amendment
 104 | made by this act to section 847.0137, Florida Statutes, in a

105 reference thereto, subsection (1) of section 856.022, Florida
106 Statutes, is reenacted to read:

107 856.022 Loitering or prowling by certain offenders in
108 close proximity to children; penalty.—

109 (1) Except as provided in subsection (2), this section
110 applies to a person convicted of committing, or attempting,
111 soliciting, or conspiring to commit, any of the criminal
112 offenses proscribed in the following statutes in this state or
113 similar offenses in another jurisdiction against a victim who
114 was under 18 years of age at the time of the offense: s. 787.01,
115 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
116 the offender was not the victim's parent or guardian; s.
117 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;
118 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.
119 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
120 847.0137; s. 847.0138; s. 847.0145; s. 985.701(1); or any
121 similar offense committed in this state which has been
122 redesignated from a former statute number to one of those listed
123 in this subsection, if the person has not received a pardon for
124 any felony or similar law of another jurisdiction necessary for
125 the operation of this subsection and a conviction of a felony or
126 similar law of another jurisdiction necessary for the operation
127 of this subsection has not been set aside in any postconviction
128 proceeding.

129 Section 6. This act shall take effect October 1, 2016.