

e 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.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 1558

INTRODUCER: Senator Book

SUBJECT: Child Exploitation

DATE: March 24, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	<b>Favorable</b>
2.			CJ	
3.			AP	
4.			RC	

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**I. Summary:**

SB 1558 repeals s. 827.071, F.S., and moves the provisions relating to sexual performance by a child and child pornography into ch. 847, F.S.

The bill also:

- Creates s. 847.003, F.S., to include the criminal offenses from s. 827.071, F.S., relating to the sexual performance by a child;
- Amends s. 847.0137, F.S. to include the criminal offenses from s. 827.071, F.S., relating to the possession and promotion of child pornography;
- Amends the definition of child pornography and offense of child pornography to include morphed child pornography where pornographic images are altered; and
- Revises terminology in ss. 847.0315 and 847.0137, F.S., to provide the ability to charge each act of sending or delivering child pornography as a separate offense.

The bill will likely have a fiscal impact on the state by increasing the need for prison beds in Florida.

The bill has an effective date of October 1, 2017.

**II. Present Situation:**

**Florida Child Pornography Laws**

Child pornography is defined, as *any* image depicting a minor, any person under the age of 18, engaged in sexual conduct.<sup>1</sup> Florida law currently contains a variety of statutes that prohibit acts

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<sup>1</sup> Section 847.001, F.S.,

relating to child pornography. Currently, these statutes are found in two different chapters, ch. 827, F.S., and ch. 847, F.S.

“Morphing” refers to a process in which a computer user distorts or transforms one image picture into another.<sup>2</sup> In recent years, individuals have started using this technique to create “morphed” child pornography, e.g., images depicting sexually explicit conduct in which an actual child’s head has been superimposed onto an adult’s body.

Florida’s child pornography laws do not include morphed pornography.

### ***Section 827.071, F.S., Sexual Performance by a Child***

Section 827.071 specifies the criminal offenses for the production of child pornography and the possession and promotion of child pornography. The following terms apply to the offenses of s. 827.071, F.S.:

- “Intentionally view” means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time;
- “Performance” means any play, motion picture, exhibition, show image, data, computer depiction, representation, or other presentation over any period of time;
- “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same;
- “Sexual conduct” means 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 constitutes sexual battery or simulates that sexual battery is being or will be committed;<sup>3</sup>
- “Sexual performance” means any performance of part thereof which includes sexual conduct by a child of less than 18 years of age; and
- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.<sup>4</sup>

Section 827.071, F.S., also defines the terms deviate sexual intercourse, sadomasochistic abuse, sexual battery, and sexual bestiality.<sup>5</sup>

Section 827.071(2), F.S., makes it a second degree felony<sup>6</sup> for a person, knowing the character and content, to employ, authorize, or induce a child to engage in a sexual performance. It is also

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<sup>2</sup> See Merriam-Webster, *Definition of “Morph,”* available at <https://www.merriam-webster.com/dictionary/morph> (last visited March 21, 2017).

<sup>3</sup> Section 847.001(16), F.S., also defines “sexual conduct” in this manner.

<sup>4</sup> Section 827.071(1), F.S.

<sup>5</sup> See s. 827.071(1), F.S.

<sup>6</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

a second degree felony for a parent, legal guardian or custodian to consent for a child to participate in a sexual performance.<sup>7</sup>

It is also a second degree felony for a person, knowing the character and content, to produce, direct, or promote any performance which includes sexual conduct by a child.

It is a third degree felony<sup>8</sup> for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation, which, in whole or in part, he or she knows to include any sexual conduct by a child.<sup>9</sup>

Section 827.071(4), F.S., makes it a second degree felony for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.<sup>10</sup>

### **Federal Child Pornography Laws**

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,<sup>11</sup> the United States Supreme Court recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Court noted that it was “unlikely that visual depictions of children . . . lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work.”<sup>12</sup>

Under these principles, states have constitutionally been able to criminalize the possession, distribution, etc., of child pornography. However, the constitutionality of criminalizing such acts is less clear when the images at issue are morphed pornography.

### ***Child Pornography Prevention Action of 1996***

Prior to 1996, federal law criminalized a variety of acts relating to child pornography.<sup>13</sup> At that time, the statutes described such material as images created using an actual minor.<sup>14</sup> In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),<sup>15</sup> which created a definition of “child pornography” which for the first time criminalized acts relating to morphed

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<sup>7</sup> Section 827.071(2), F.S.

<sup>8</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> The statute also specifies that the possession, control, or intentional viewing of each such photograph, etc., is a separate offense. If such photograph, etc., includes sexual conduct by more than one child, then each child in each photograph, etc., that is knowingly possessed, controlled, or intentionally viewed is a separate offense.

<sup>10</sup> Possession of three or more copies of such photographs, etc., is prima facie evidence of intent to promote.

<sup>11</sup> 458 U.S. 747 (1982).

<sup>12</sup> *Id.* at 763.

<sup>13</sup> *See, e.g.*, 18 U.S.C. s. 2252 (1994 ed.).

<sup>14</sup> *U.S. v. Hotaling*, 599 F.Supp. 2d 306, 309 (N.D.N.Y. 2008); *see also* 18 U.S.C. ss. 2252 and 2256 (1994 ed.).

<sup>15</sup> Pub. L. No. 104-208, s. 121.

child pornography. Under the CPPA, “child pornography” was defined as:

- (8) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct,<sup>16</sup> where:
- (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
  - (B) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct (i.e., *virtual child pornography – created without using an actual child*);
  - (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor<sup>17</sup> is engaging in sexually explicit conduct (i.e., *morphed child pornography*); or
  - (D) Such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.<sup>18</sup>

### ***Case Law Following the Passage of the CPPA***

In 2002, the United States Supreme Court decided *Ashcroft v. Free Speech Coalition*,<sup>19</sup> a case in which a California trade association for the adult-entertainment industry challenged section 2256(8)(B) of the CPPA as unconstitutionally overbroad. As noted above, section 2256(8)(B) made it a crime to possess or distribute images depicting a child or what appears to be a child, engaging in sexually explicit conduct (i.e., virtual child pornography).<sup>20</sup>

The Court held that the “speech” criminalized in the challenged provision of the CPPA violated the First Amendment because it extended the federal prohibition against child pornography to sexually explicit images that appeared to depict minors but were produced without using any real children.<sup>21</sup> The Court decided that by prohibiting child pornography that did not depict an actual child, section 2256(8)(B) of the CPPA “abridged the freedom to engage in a substantial amount of lawful speech” and was therefore overbroad and unconstitutional.<sup>22</sup>

The *Ashcroft* decision did not specifically address the constitutionality of 18 U.S.C. 2256(8)(C) (prohibiting *morphed* child pornography), it did note, in dictum, that “[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of

<sup>16</sup> The term “sexually explicit conduct” was defined as actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal) whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person. 18 U.S.C. s. 2256(2) (1996 ed.)

<sup>17</sup> The term “identifiable minor” was defined as a person who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, and: who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction. The term was not be construed to require proof of the actual identity of the identifiable minor. 18 U.S.C. s. 2556(9) (1996 ed.).

<sup>18</sup> 18 U.S.C. s. 2556(8) (1996 ed.).

<sup>19</sup> 535 U.S. 234 (2002).

<sup>20</sup> 18 U.S.C. s. 2556(8) (1996 ed.).

<sup>21</sup> *Ashcroft*, 535 U.S. at 256.

<sup>22</sup> *Id.*

real children. . .”<sup>23</sup> Courts have taken this dictum to suggest that the *Ashcroft* court would have deemed morphed child pornography as not protected by the First Amendment.<sup>24</sup>

***Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (Protect Act)***

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act” (Protect Act) in 2003.<sup>25</sup> The Protect Act, in part, narrowed the definition of “virtual” child pornography in section (8)(B) of the CPPA to include virtual or computer-generated images that are “indistinguishable from” images of actual minors engaging in sexually explicit conduct.<sup>26</sup>

Notably, the definition of “morphed” child pornography contained in section 2256(8)(C) remained unchanged between the CPPA and the Protect Act.

***Case Law since the Passage of the Protect Act***

To date, the federal statutes relating to morphed child pornography have been upheld.<sup>27</sup> In *United States v. Bach*,<sup>28</sup> the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection.<sup>29</sup> The photograph of a well-known child entertainer’s head had been “skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of [the child entertainer] sitting in the tree.”<sup>30</sup>

The defendant appealed arguing that his conviction was invalid because the definition of morphed child pornography violated the First Amendment. The United States Court of Appeals for the Eighth Circuit disagreed, holding that morphed child pornography “implicate the interests of a real child,” and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity.<sup>31</sup> The court noted that there may be instances when the “application of s. 2256(8)(C) violates the First Amendment, this is not such a case. This image involves the type of harm which can constitutionally be prosecuted under [*Ashcroft*] and *Ferber*.”<sup>32</sup>

In *United States v. Anderson*, the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.<sup>33</sup> The defendant moved to dismiss the

<sup>23</sup> *Id.* at 242.

<sup>24</sup> *McFadden v. Alabama*, 67 So. 3d 169, 181-182 (Ala. Crim. App. 2010).

<sup>25</sup> Pub. L. No. 108-21.

<sup>26</sup> 18 U.S.C. s. 2256(8)(B).

<sup>27</sup> See *United States v. Ramos*, 685 F. 3d 120, 134 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 567 (2012); see also *Doe v. Boland*, 630 F. 3d 491, 497 (6th Cir. 2011).

<sup>28</sup> 400 F. 3d 622 (8th Cir. 2005).

<sup>29</sup> *Id.* at 625.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 632.

<sup>32</sup> *Id.* See also *United States v. Hotaling*, 634 F. 3d 725 (2d Cir. 2008), *cert. denied*, 132 S.Ct. 843 (2011) (citing *Bach*, the Court held that “child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment”).

<sup>33</sup> 759 F. 3d 891 (8th Cir. 2014).

charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.<sup>34</sup> The court noted that the image at issue was different from the one in *Bach* in that “no minor was sexually abused.”<sup>35</sup> However, the court held that because such images falsely portray identifiable children engaging in sexual activity, such images implicate the government’s compelling interest in protecting minors. Using this reasoning, the court held that the definition of morphed child pornography was constitutional.<sup>36</sup>

### Florida Case Law – Child Pornography

In 2010, Florida’s Second DCA decided *Stelmack v. State*,<sup>37</sup> a case in which the defendant was charged with violating s. 827.071(5), F.S. (possession of child pornography). The images at issue showed the faces and heads of two girls, ages 11 and 12, which were cut and pasted onto images of a 19-year old woman lewdly exhibiting her genitals.<sup>38</sup> The court closely examined the definition of “sexual conduct,” and determined that it requires images to include actual lewd exhibition of the genitals *by a child*.<sup>39</sup> Because the only sexual conduct in the images at issue was performed by an adult, the court held that the images were not prohibited by s. 827.071(5), F.S.<sup>40</sup>

The court also noted that the images depicted *simulated* lewd exhibition of the genitals by a child. The state argued that s. 827.071(5), F.S., proscribed such images because they were photographs or representations “which ... *in part* ... include ... sexual conduct by a child.”<sup>41</sup> The court disagreed and found that the legislature specifically excluded *simulated* lewd exhibition from the definition of “sexual conduct.” Specifically the court stated, “[i]f the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so. In fact, child pornography has been defined in the federal statutes to specifically include composite images. . . .”<sup>42</sup>

### Computer Pornography

#### ***Section 847.0135, F.S., – Computer Pornography; Prohibited Computer Usage; Traveling to Meet a Minor***

It is a third degree felony if:

- A person:
  - Knowingly compiles, enters into, or transmits by use of computer;
  - Makes, prints, publishes, or reproduces by other computerized means;
  - Knowingly causes or allows to be entered into or transmitted by use of computer; or
  - Buys, sells, receives, exchanges, or disseminates;
- Any notice, statement, or advertisement of *any* minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 895.

<sup>36</sup> *Id.* at 896.

<sup>37</sup> 58 So. 3d 874 (Fla. 2d DCA 2010).

<sup>38</sup> *Id.* at 875.

<sup>39</sup> *Id.* at 877

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* (emphasis in original).

<sup>42</sup> *Id.* at 876.

purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with *any* minor, or the visual depiction of such conduct.<sup>43</sup>

### ***Florida Case Law – Number of Offenses Charged***

In 2015, the Fourth District Court of Appeal (DCA) in *State v. Losada*, considered the number of counts that may be charged for the offenses of computer pornography under s. 847.0135(2), F.S., and transmission of child pornography under s. 847.0137(2), F.S., where more than one image of child pornography is at issue.<sup>44</sup>

In this case, the defendant sent an undercover police officer a single image containing child pornography. On a subsequent day, the officer requested and received from the defendant access to files stored on the defendant’s computer, which contained 32 images of child pornography. Defendant was charged with and convicted of 33 counts of computer pornography in violation of s. 847.0135(2), F.S., and 33 counts of transmission of child pornography in violation of s. 847.0137(2), F.S. The defendant appealed his convictions, arguing that he could not be prosecuted for 33 counts of each offense because the Legislature did not intend for these offenses to be charged on an image-by-image basis.<sup>45</sup>

The court affirmed the trial court’s dismissal of 31 counts of computer pornography and 31 counts of transmission of child pornography. The dismissal was based on the Florida Supreme Court’s “a/any” test which holds that use of the word “a” before an item described in a statute evidences the intent of the Legislature to make each item subject to a separate prosecution; whereas, use of the word “any” before the item, is ambiguous and may evidence legislative intent that only one prosecution is intended for multiple items.<sup>46</sup>

Due to the use the term “any” in ss. 847.0135 and 847.0137, the court concluded that the Legislature did not intend to make each individual image subject to separate prosecution.<sup>47</sup>

### ***Section 847.0137, F.S., Transmitting Child Pornography***

Section 847.0137, F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography to another person it is a third degree felony.

The following definitions apply to the above-described offense:

- “Child pornography” means *any* image depicting a minor engaged in sexual conduct;
- “Minor” means any person under the age of 18 years;
- “Sexual conduct” means 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 constitutes sexual battery or simulates that sexual battery is being or will be committed;

<sup>43</sup> Section 847.0135(2), F.S.

<sup>44</sup> 175 So. 3d 911 (Fla. 4th DCA 2015).

<sup>45</sup> *Id.* at 912.

<sup>46</sup> *Id.* at 913-914.

<sup>47</sup> *Id.* at 914-915

- “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks; and
- “Transmit” means the act of sending and causing to be delivered any 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.<sup>48</sup>

### ***Florida Case law – Transmitting Child Pornography***

Recently, the Florida Supreme Court resolved a conflict between two District Courts of Appeal (DCAs) that considered whether the definition of “transmit” as used in s. 847.0137, F.S., to prohibit the transmission of child pornography includes transmission via a file-sharing program. According to the Fifth DCA in *Biller v. State*, the definition did not;<sup>49</sup> whereas, the Fourth DCA in *Smith v. State*,<sup>50</sup> found that a file-sharing program could be used to transmit child pornography in violation of s. 847.0137, F.S.

The Florida Supreme court affirmed the Fourth DCA’s decision in *Smith* and held “that the use of a file-sharing program, where the originator affirmatively grants the receiver access to child pornography placed by the originator in files accessible through the file-sharing program, constitutes the transmission of child pornography under the plain meaning of s. 847.0137, F.S.”<sup>51</sup>

## **III. Effect of Proposed Changes:**

### **Child Pornography**

#### ***Section 827.071, F.S., Sexual Performance by a Child***

The bill repeals s. 827.071, F.S. (Section 28).

#### ***Section 847.003, F.S., Sexual Performance by a Child***

The bill creates s. 847.003, F.S. (Section 30).

The bill moves the criminal offenses from s. 827.071, F.S., relating to the sexual performance by a child, to the newly created s. 847.003, F.S. The bill does changes the elements of these offenses.

The bill also moves the definitions of the terms “performance,” “promote,” and “sexual performance,” from s. 827.071, F.S., to s. 847.003, F.S. The bill does not change the definitions of these terms.

#### ***Section 847.0137, F.S., Child Pornography***

The bill moves the criminal offenses from s. 827.071, F.S., for the possession and promotion of child pornography to s. 847.0137, F.S., and makes the following changes (Section 33).

<sup>48</sup> Section 847.001, F.S.

<sup>49</sup> 109 So. 3d 1240 (Fla. 5th DCA 2013).

<sup>50</sup> 190 So. 3d 94 (Fla. 4th DCA 2015).

<sup>51</sup> 204 So. 3d 18, 19 (Fla. 2016).



The bill defines the terms child pornography, identifiable minor, and visual depiction to mirror the federal definitions in 18 U.S.C. s. 2256.

The bill defines child pornography to mean *a* visual depiction of sexual conduct, in which:

- The production of such visual depiction involves the use of a minor engaging in sexual conduct; or
- Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

An identifiable minor is a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature and:

- Who was a minor at the time the visual depiction was created, adapted, or modified; or
- Whose image as a minor was used in creating, adapting, or modifying the visual depiction.

As in 18 U.S.C. s. 2256(9), the bill does not require proof of the actual identity of the identifiable minor.

A visual depiction includes, but is not limited to, a photograph, picture, image, motion picture, film, video, representation, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means. The term also includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data that is capable of conversion into a visual image that has been transmitted by any means, whether stored in a permanent or nonpermanent format.

The bill also moves the definitions of the terms "intentionally view" and "promote" from s. 827.071, F.S., to s. 847.0137, F.S. The bill does not change the definitions of these terms.

The bill amends the definition of "transmit" to add that the act of sending and causing to be delivered *includes the act of providing access for receiving and causing to be delivered*. The bill also removes the reference to *any image* and replaces it with *visual depiction*. The bill also adds *an interconnected network* to the definition of transmit.

The definition of "transmit" now reads, "act of sending and causing to be delivered, including the act of providing access for receiving and causing to be delivered, a visual depiction, information, or data over or through any medium, including the Internet or an interconnected network, by use of electronic equipment or other device."

The bill amends the offenses of possession and promotion of child pornography to include newly defined term "visual depiction."

Cumulatively, the above-described changes make it a crime to possess, promote, and transmit morphed child pornography in Florida.

The bill amends s. 847.0137, F.S., to change the term "any" to "an" where it is used in the offense of the transmission of child pornography. These changes result in the ability to charge

transmission of child pornography offenses separately based upon each visual depiction, data, or information and each recipient.

The bill also makes numerous conforming changes that reflect the repeal of s. 827.071, F.S., the creation of s. 847.003, F.S., and the expansion of s. 847.0137, F.S.

### ***Section 847.001, F.S., Definitions***

The bill changes the definition of “child pornography” and “minor” to incorporate the court’s findings in *State v. Losada*, 175 So. 3d 911 (Fla. 4th DCA 2015) (Section 29).

The bill removes the current definition of child pornography, “any image depicting a minor engaged in sexual conduct,” and instead defines the term by a cross-reference to the definition of child pornography created by the bill in s. 847.0137, F.S.

The bill changes the term “minor” to “minor or child” and defines it to mean a person under the age of 18 years.

The bill expands the definition of "sexual conduct" applicable to all of ch. 847, F.S., to include “simulated” lewd exhibition of the genitals.

### **Computer Pornography**

#### ***Section 847.0135, F.S., Computer Pornography; Child Exploitation***

The bill amends s. 847.0135, F.S., (Section 31) to change the term “any” to “an” where used in the provisions for the offense of computer pornography. These changes result in the ability to charge computer pornography offenses separately based upon each notice, statement, or advertisement and each minor affected.

### **Other**

To better clarify the contents of ch. 847, F.S., the bill also directs the Division of Law Revision and Information to rename the chapter as “Obscenity; Child Exploitation” (Section 61).

**Sections 1 – 27, 32, 34 – 60**, amend ss. 16.56, 39.01, 39.0132, 39.0139, 39.301, 39.509, 90.404, 92.56, 92.561, 92.565, 435.04, 435.07, 456.074, 480.041, 480.043, 743.067, 772.102, 775.082, 775.0847, 775.0877, 775.21, 775.215, 784.046, 794.0115, 794.024, 794.056, 796.001, 847.01357, 856.022, 895.02, 905.34, 934.07, 938.085, 938.10, 943.0435, 943.04354, 943.0585, 943.059, 944.606, 944.607, 947.1405, 948.013, 948.03, 948.04, 948.06, 948.062, 948.101, 948.30, 948.32, 960.03, 960.197, 985.04, 985.475, 1012.315 and 921.0022, F.S., to conform provisions to changes made by the bill and correct cross references.

**Sections 62 – 133** amend ss. 39.402, 39.506, 39.509, 39.521, 39.524, 39.806, 63.089, 63.092, 68.07, 92.55, 92.605, 322.141, 381.004, 384.29, 390.01114, 393.067, 394.495, 394.9125, 397.4872, 409.1678, 435.07, 655.50, 741.313, 775.084, 775.0862, 775.13, 775.21, 775.24, 775.25, 775.261, 784.049, 794.011, 794.03, 794.075, 847.002, 847.012, 847.01357, 847.0138, 896.101, 903.0351, 903.046, 905.34, 921.0022, 921.141, 921.187, 943.0435, 943.0436, 943.325,

944.11, 944.607, 944.608, 944.609, 944.70, 947.13, 947.1405, 947.141, 948.06, 948.063, 948.064, 948.08, 948.12, 948.30, 948.31, 951.27, 960.003, 960.065, 984.03, 985.0301, 985.04, 985.441, 985.4815, and 1012.467, F.S., to reenact provisions to incorporate changes made by the bill.

The bill has an effective date of October 1, 2017 (section 134).

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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 repeals s. 827.071, F.S., and moves the provisions relating to sexual performance by a child and child pornography into ch. 847, F.S. This bill also defines a variety of terms to include “morphing,” conforming to those in federal law. The bill revises terminology to allow the ability to charge each act sending or delivering child pornography as a separate offense.

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the bill’s impact. However, the CJIC considered a substantively similar bill during the 2016 legislative session and determined the bill would have a fiscal impact on the state by increasing the use of prison beds. The amount of the impact was indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill identically defines the term “promote” in s. 847.003, F.S., and 847.0137, F.S. It is unclear why this term is not included in definition section for ch. 847, F.S., s. 847.001, F.S.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.56, 39.01, 39.0132, 39.0139, 39.301, 39.509, 90.404, 92.56, 92.561, 92.565, 435.04, 435.07, 456.074, 480.041, 480.043, 743.067, 772.102, 775.082, 775.0847, 775.0877, 775.21, 775.215, 784.046, 794.0115, 794.024, 794.056, 796.001, 847.001, 847.0135, 847.01357, 847.0137, 856.022, 895.02, 905.34, 934.07, 938.085, 938.10, 943.0435, 943.04354, 943.0585, 943.059, 944.606, 944.607, 947.1405, 948.013, 948.03, 948.04, 948.06, 948.062, 948.101, 948.30, 948.32, 960.03, 960.197, 985.04, 985.475, 1012.315 and 921.0022.

This bill creates section 847.003 of the Florida Statutes.

This bill repeals section 827.071 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 39.402, 39.506, 39.509, 39.521, 39.524, 39.806, 63.089, 63.092, 68.07, 92.55, 92.605, 322.141, 381.004, 384.29, 390.01114, 393.067, 394.495, 394.9125, 397.4872, 409.1678, 435.07, 655.50, 741.313, 775.084, 775.0862, 775.13, 775.21, 775.24, 775.25, 775.261, 784.049, 794.011, 794.03, 794.075, 847.002, 847.012, 847.01357, 847.0138, 896.101, 903.0351, 903.046, 905.34, 921.0022, 921.141, 921.187, 943.0435, 943.0436, 943.325, 944.11, 944.607, 944.608, 944.609, 944.70, 947.13, 947.1405, 947.141, 948.06, 948.063, 948.064, 948.08, 948.12, 948.30, 948.31, 951.27, 960.003, 960.065, 984.03, 985.0301, 985.04, 985.441, 985.4815, and 1012.467.

**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.