

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Harding offered the following:

Amendment (with title amendment)

Remove lines 52-414 and insert:

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 6
 7 altered, adapted, or modified, or whose image as a minor was
 8 used in the creation, alteration, adaptation, or modification of
 9 the image; and

10 2. Who is recognizable as an actual person by the person's
 11 face, likeness, or other distinguishing characteristic, such as
 12 a unique birthmark, or other recognizable feature.

13
 14 The term may not be construed to require proof of the actual
 15 identity of the identifiable minor.

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16 ~~(d)~~(e) "Sadomasochistic abuse" means flagellation or
17 torture by or upon a person or the condition of being fettered,
18 bound, or otherwise physically restrained, for the purpose of
19 deriving sexual satisfaction, or satisfaction brought about as a
20 result of sadistic violence, from inflicting harm on another or
21 receiving such harm oneself.

22 ~~(e)~~(d) "Sexual battery" means oral, anal, or vaginal
23 penetration by, or union with, the sexual organ of another or
24 the anal or vaginal penetration of another by any other object;
25 however, sexual battery does not include an act done for a bona
26 fide medical purpose.

27 ~~(f)~~(e) "Sexual bestiality" means any sexual act, actual or
28 simulated, between a person and an animal involving the sex
29 organ of the one and the mouth, anus, or vagina of the other.

30 ~~(g)~~(f) "Sexual conduct" means actual or simulated sexual
31 intercourse, deviate sexual intercourse, sexual bestiality,
32 masturbation, or sadomasochistic abuse; actual or simulated lewd
33 exhibition of the genitals; actual physical contact with a
34 person's clothed or unclothed genitals, pubic area, buttocks,
35 or, if such person is a female, breast with the intent to arouse
36 or gratify the sexual desire of either party; or any act or
37 conduct which constitutes sexual battery or simulates that
38 sexual battery is being or will be committed. A mother's
39 breastfeeding of her baby does not under any circumstance
40 constitute "sexual conduct."

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

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

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

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

49 2. Sadomasochistic abuse involving a child.

50 3. Sexual battery involving a child.

51 4. Sexual bestiality involving a child.

52 5. Any motion picture, film, video, or computer-generated
53 motion picture, film, or video ~~movie~~ involving a child,
54 regardless of length and regardless of whether the motion
55 picture, film, video, or computer-generated motion picture,
56 film, or video ~~movie~~ contains sound.

57 (3)(a) In the case of a felony of the third degree, the
58 offense is reclassified to a felony of the second degree.

59 (b) In the case of a felony of the second degree, the
60 offense is reclassified to a felony of the first degree.

61
62 For purposes of sentencing under chapter 921 and determining
63 incentive gain-time eligibility under chapter 944, a felony
64 offense that is reclassified under this section is ranked one

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65 level above the ranking under s. 921.0022 or s. 921.0023 of the
66 offense committed.

67 Section 2. Paragraph (b) of subsection (5) of section
68 784.049, Florida Statutes, is amended to read:

69 784.049 Sexual cyberharassment.—

70 (5) An aggrieved person may initiate a civil action
71 against a person who violates this section to obtain all
72 appropriate relief in order to prevent or remedy a violation of
73 this section, including the following:

74 (b) Monetary damages to include \$10,000 ~~\$5,000~~ or actual
75 damages incurred as a result of a violation of this section,
76 whichever is greater.

77 Section 3. Section 827.071, Florida Statutes, is amended
78 to read:

79 827.071 Sexual performance by a child; child pornography;
80 penalties.—

81 (1) As used in this section, the following definitions
82 shall apply:

83 (a) "Child" or "minor" means any person, whose identity is
84 known or unknown, younger than 18 years of age.

85 (b) "Child pornography" means:

86 1. Any image depicting a minor engaged in sexual conduct;

87 or

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88 2. Any image that has been created, altered, adapted, or
89 modified by electronic, mechanical, or other means, to portray
90 an identifiable minor engaged in sexual conduct.

91 (c)-(a) "Deviate sexual intercourse" means sexual conduct
92 between persons not married to each other consisting of contact
93 between the penis and the anus, the mouth and the penis, or the
94 mouth and the vulva.

95 (d) "Identifiable minor" means a person:

96 1. Who was a minor at the time the image was created,
97 altered, adapted, or modified, or whose image as a minor was
98 used in the creation, alteration, adaptation, or modification of
99 the image; and

100 2. Who is recognizable as an actual person by the person's
101 face, likeness, or other distinguishing characteristic, such as
102 a unique birthmark, or other recognizable feature.

103
104 The term may not be construed to require proof of the actual
105 identity of the identifiable minor.

106 (e)-(b) "Intentionally view" means to deliberately,
107 purposefully, and voluntarily view. Proof of intentional viewing
108 requires establishing more than a single image, motion picture,
109 exhibition, show, ~~image~~, data, computer depiction,
110 representation, or other presentation over any period of time.

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111 ~~(f)(e)~~ "Performance" means any play, motion picture,
112 photograph, or dance or any other visual representation
113 exhibited before an audience.

114 ~~(g)(d)~~ "Promote" means to procure, manufacture, issue,
115 sell, give, provide, lend, mail, deliver, transfer, transmit,
116 transmute, publish, distribute, circulate, disseminate, present,
117 exhibit, send, post, share, or advertise or to offer or agree to
118 do the same.

119 ~~(h)(e)~~ "Sadomasochistic abuse" means flagellation or
120 torture by or upon a person, or the condition of being fettered,
121 bound, or otherwise physically restrained, for the purpose of
122 deriving sexual satisfaction from inflicting harm on another or
123 receiving such harm oneself.

124 ~~(i)(f)~~ "Sexual battery" means oral, anal, or vaginal
125 penetration by, or union with, the sexual organ of another or
126 the anal or vaginal penetration of another by any other object;
127 however, "sexual battery" does not include an act done for a
128 bona fide medical purpose.

129 ~~(j)(g)~~ "Sexual bestiality" means any sexual act between a
130 person and an animal involving the sex organ of the one and the
131 mouth, anus, or vagina of the other.

132 ~~(k)(h)~~ "Sexual conduct" means actual or simulated sexual
133 intercourse, deviate sexual intercourse, sexual bestiality,
134 masturbation, or sadomasochistic abuse; actual or simulated lewd
135 exhibition of the genitals; actual physical contact with a

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136 person's clothed or unclothed genitals, pubic area, buttocks,
137 or, if such person is a female, breast, with the intent to
138 arouse or gratify the sexual desire of either party; or any act
139 or conduct which constitutes sexual battery or simulates that
140 sexual battery is being or will be committed. A mother's
141 breastfeeding of her baby does not under any circumstance
142 constitute "sexual conduct."

143 ~~(l)-(i)~~ "Sexual performance" means any performance or part
144 thereof which includes sexual conduct by a child ~~of less than 18~~
145 ~~years of age.~~

146 ~~(m)-(j)~~ "Simulated" means the explicit depiction of conduct
147 set forth in paragraph ~~(k)~~ ~~(h)~~ which creates the appearance of
148 such conduct and which exhibits any uncovered portion of the
149 breasts, genitals, or buttocks.

150 (2) A person is guilty of the use of a child in a sexual
151 performance if, knowing the character and content thereof, he or
152 she employs, authorizes, or induces a child ~~less than 18 years~~
153 ~~of age~~ to engage in a sexual performance or, being a parent,
154 legal guardian, or custodian of such child, consents to the
155 participation by such child in a sexual performance. A person
156 who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a
157 felony of the second degree, punishable as provided in s.
158 775.082, s. 775.083, or s. 775.084.

159 (3) A person is guilty of promoting a sexual performance
160 by a child when, knowing the character and content thereof, he

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161 or she produces, directs, or promotes any performance which
162 includes sexual conduct by a child ~~less than 18 years of age~~. A
163 person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~
164 a felony of the second degree, punishable as provided in s.
165 775.082, s. 775.083, or s. 775.084.

166 (4) It is unlawful for any person to possess with the
167 intent to promote any photograph, motion picture, exhibition,
168 show, representation, or other presentation which, in whole or
169 in part, includes child pornography ~~any sexual conduct by a~~
170 ~~child~~. The possession of three or more copies of such
171 photograph, motion picture, representation, or presentation is
172 prima facie evidence of an intent to promote. A person who
173 ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony
174 of the second degree, punishable as provided in s. 775.082, s.
175 775.083, or s. 775.084.

176 (5)(a) It is unlawful for any person to knowingly possess,
177 control, or intentionally view a photograph, motion picture,
178 exhibition, show, representation, image, data, computer
179 depiction, or other presentation which, in whole or in part, he
180 or she knows to include child pornography ~~any sexual conduct by~~
181 ~~a child~~. The possession, control, or intentional viewing of each
182 such photograph, motion picture, exhibition, show, image, data,
183 computer depiction, representation, or presentation is a
184 separate offense. If such photograph, motion picture,
185 exhibition, show, representation, image, data, computer

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186 depiction, or other presentation includes child pornography
187 depicting ~~sexual conduct by~~ more than one child, then each such
188 child in each such photograph, motion picture, exhibition, show,
189 representation, image, data, computer depiction, or other
190 presentation that is knowingly possessed, controlled, or
191 intentionally viewed is a separate offense. A person who
192 violates this paragraph ~~subsection~~ commits a felony of the third
193 degree, punishable as provided in s. 775.082, s. 775.083, or s.
194 775.084.

195 (b) Paragraph (a) ~~This subsection~~ does not apply to any
196 material possessed, controlled, or intentionally viewed as part
197 of a law enforcement investigation.

198 (6) Prosecution of a ~~any~~ person for an offense under this
199 section does ~~shall~~ not prohibit prosecution of that person in
200 this state for a violation of any other law of this state,
201 including a law providing for greater penalties than prescribed
202 in this section or any other crime punishing the sexual
203 performance or the sexual exploitation of children.

204 Section 4. Section 836.13, Florida Statutes, is created to
205 read:

206 836.13 Promotion of an altered sexual depiction;
207 prohibited acts; penalties; applicability.-

208 (1) As used in this section, the term:

209 (a) "Altered sexual depiction" means any visual depiction
210 that, as a result of any type of digital, electronic,

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211 mechanical, or other modification, alteration, or adaptation,
212 depicts a realistic version of an identifiable person:

213 1. With the nude body parts of another person as the nude
214 body parts of the identifiable person;

215 2. With computer-generated nude body parts as the nude
216 body parts of the identifiable person; or

217 3. Engaging in sexual conduct as defined in s. 847.001 in
218 which the identifiable person did not engage.

219 (b) "Identifiable person" means a person who is
220 recognizable as an actual person by the person's face, likeness,
221 or other distinguishing characteristic, such as a unique
222 birthmark, or other recognizable feature.

223 (c) "Nude body parts" means the human male or female
224 genitals, pubic area, or buttocks with less than a fully opaque
225 covering; or the female breast with less than a fully opaque
226 covering of any portion thereof below the top of the nipple; or
227 the depiction of covered male genitals in a discernibly turgid
228 state. The term does not under any circumstances include a
229 mother breastfeeding her baby.

230 (d) "Promote" means to issue, sell, give, provide, lend,
231 mail, deliver, transfer, transmit, transmute, publish,
232 distribute, circulate, disseminate, present, exhibit, send,
233 post, share, or advertise or to offer or agree to do the same.

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234 (e) "Visual depiction" includes, but is not limited to, a
235 photograph, picture, image, motion picture, film, video, or
236 other visual representation.

237 (2) A person who willfully and maliciously promotes an
238 altered sexual depiction of an identifiable person, without the
239 consent of the identifiable person, and who knows or reasonably
240 should have known that such visual depiction was an altered
241 sexual depiction, commits a felony of the third degree,
242 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

243 (3) Every act, thing, or transaction prohibited by this
244 section constitutes a separate offense and is punishable as
245 such.

246 (4) The presence of a disclaimer within an altered sexual
247 depiction which notifies a viewer that the person or persons
248 depicted did not consent to or participate in the creation or
249 promotion of the material, or that the person or persons
250 depicted did not actually perform the actions portrayed, is not
251 a defense and does not relieve a person of criminal liability
252 under this section.

253 (5) An aggrieved person may initiate a civil action
254 against a person who violates subsection (2) to obtain
255 appropriate relief in order to prevent or remedy a violation of
256 subsection (2), including all of the following:

257 (a) Injunctive relief.

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258 (b) Monetary damages to include \$10,000 or actual damages
259 incurred as a result of a violation of subsection (2), whichever
260 is greater.

261 (c) Reasonable attorney fees and costs.

262 (6) The criminal and civil penalties of this section do
263 not apply to:

264 (a) A provider of an interactive computer service as
265 defined in 47 U.S.C. s. 230(f), an information service as
266 defined in 47 U.S.C. s. 153, or a communications service as
267 defined in s. 202.11, which provides the transmission, storage,
268 or caching of:

269 1. Electronic communications or messages of others;

270 2. Another related telecommunications or commercial mobile
271 radio service; or

272 3. Content provided by another person;

273 (b) A law enforcement officer, as defined in s. 943.10(1),
274 or any local, state, federal, or military law enforcement agency
275 that promotes an altered sexual depiction in connection with the
276 performance of his or her duties as a law enforcement officer or
277 the duties of the law enforcement agency;

278 (c) A person reporting unlawful activity; or

279 (d) A person participating in a hearing, trial, or other
280 legal proceeding.

281 (7) A violation of this section is committed within this
282 state if any conduct that is an element of the offense, or any

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283 harm to the depicted person resulting from the offense, occurs
284 within this state.

285 (8) Prosecution of a person for an offense under this
286 section does not prohibit prosecution of that person in this
287 state for a violation of any other law of this state, including
288 a law providing for greater penalties than prescribed in this
289 section or any other crime related to child pornography or the
290 sexual performance or the sexual exploitation of children.

291 Section 5. Section 836.14, Florida Statutes, is created to
292 read:

293 836.14 Theft or unauthorized possession or promotion of a
294 sexually explicit image.—

295 (1) As used in this section, the term:

296 (a) "Identifiable person" has the same meaning as in s.
297 836.13.

298 (b) "Promote" has the same meaning as in s. 836.13.

299 (c) "Sexually explicit image" means any image depicting an
300 identifiable person portraying nudity as defined in s. 847.001
301 or an identifiable person engaging in sexual conduct as defined
302 in s. 847.001.

303 (2) A person who commits theft, in violation of s.
304 812.014., of a sexually explicit image commits a felony of the
305 third degree, punishable as provided in s. 775.082, s. 775.083,
306 or s. 775.084.

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307 (3) A person who willfully possesses with the intent to
308 promote a sexually explicit image for the purpose of pecuniary
309 or any other financial gain, when he or she knows or should have
310 known the image was obtained in violation of subsection (2),
311 commits a felony of the third degree, punishable as provided in
312 s. 775.082, s. 775.083, or s. 775.084.

313 (4) A person who willfully promotes a sexually explicit
314 image for the purpose of pecuniary or any other financial gain,
315 when he or she knows or should have known the image was obtained
316 in violation of subsection (2), commits a felony of the second
317 degree, punishable as provided in s. 775.082, s. 775.083, or s.
318 775.084.

319 (5) Every act, thing, or transaction prohibited by this
320 section constitutes a separate offense and is punishable as
321 such.

322 (6) An aggrieved person may initiate a civil action
323 against a person who violates this section to obtain all
324 appropriate relief in order to prevent or remedy a violation of
325 this section, including the following:

326 (a) Injunctive relief.

327 (b) Monetary damages to include \$10,000 or actual damages
328 incurred as a result of a violation of this section, whichever
329 is greater.

330 (c) Reasonable attorney fees and costs.

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331 (7) The criminal and civil penalties of this section do
332 not apply to:

333 (a) A provider of an interactive computer service as
334 defined in 47 U.S.C. s. 230(f), an information service as
335 defined in 47 U.S.C. s. 153, or a communications service as
336 defined in s. 202.11, which provides the transmission, storage,
337 or caching of:

- 338 1. Electronic communications or messages of others;
339 2. Another related telecommunications or commercial mobile
340 radio service; or
341 3. Content provided by another person;

342 (b) A law enforcement officer, as defined in s. 943.10(1),
343 or any local, state, federal, or military law enforcement agency
344 that promotes a sexually explicit image in connection with the
345 performance of his or her duties as a law enforcement officer or
346 the duties of the law enforcement agency;

347 (c) A person reporting unlawful activity;

348 (d) A person participating in a hearing, trial, or other
349 legal proceeding;

350 (e) Sexually explicit images that resulted from the
351 voluntary exposure of the person depicted in a public or
352 commercial setting; or

353 (f) A bona fide news media organization possessing or
354 promoting a sexually explicit image for a legitimate and
355 newsworthy purpose.

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356 (8) A violation of this section is committed within this
357 state if any conduct that is an element of the offense, or any
358 harm to the depicted individual resulting from the offense,
359 occurs within this state.

360 (9) Prosecution of a person for an offense under this
361 section does not prohibit prosecution of that person in this
362 state for a violation of any other law of this state, including
363 a law providing for greater penalties than prescribed in this
364 section or any other crime related to child pornography or the
365 sexual performance or the sexual exploitation of children.

366 Section 6. Present subsections (7) through (11) and (12)
367 through (20) of section 847.001, Florida Statutes, are
368 renumbered as subsections (8) through (12) and (14) through
369 (22), respectively, subsection (3) and present subsections (8),
370 (16), and (19) of that section, are amended, and new subsections
371 (7) and (13) are added to that section, to read:

372 847.001 Definitions.—As used in this chapter, the term:

373 (3) "Child pornography" means:

374 (a) Any image depicting a minor engaged in sexual conduct;

375 or

376 (b) Any image that has been created, altered, adapted, or
377 modified by electronic, mechanical, or other means, to portray
378 an identifiable minor engaged in sexual conduct.

379 (7) "Identifiable minor" means a person:

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380 (a) Who was a minor at the time the image was created,
381 altered, adapted, or modified, or whose image as a minor was
382 used in the creation, alteration, adaptation, or modification of
383 the image; and

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385

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T I T L E A M E N D M E N T

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Remove lines 17-19 and insert:

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providing definitions; prohibiting the theft of a sexually

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explicit image; prohibiting the willful possession or promotion

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of a stolen sexually explicit image with specified intent;