

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WITHDRAWN	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**

Remove lines 52-414 and insert:

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

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

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

15 (d)-(e) "Sodomasochistic abuse" means flagellation or  
 16 torture by or upon a person or the condition of being fettered,

## Amendment No. 1

17 bound, or otherwise physically restrained, for the purpose of  
18 deriving sexual satisfaction, or satisfaction brought about as a  
19 result of sadistic violence, from inflicting harm on another or  
20 receiving such harm oneself.

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

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

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

Amendment No. 1

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

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

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

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

48 2. Sadoomasochistic abuse involving a child.

49 3. Sexual battery involving a child.

50 4. Sexual bestiality involving a child.

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

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

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

60  
61 For purposes of sentencing under chapter 921 and determining  
62 incentive gain-time eligibility under chapter 944, a felony  
63 offense that is reclassified under this section is ranked one

Amendment No. 1

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

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

68 784.049 Sexual cyberharassment.—

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

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

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

78 827.071 Sexual performance by a child; child pornography;  
79 penalties.—

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

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

84 (b) "Child pornography" means:

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

86 or

Amendment No. 1

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

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

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

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

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

102  
103 The term may not be construed to require proof of the actual  
104 identity of the identifiable minor.

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

Amendment No. 1

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

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

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

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

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

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

527667 - h1453-line52.docx

Published On: 2/18/2022 6:50:27 PM

## Amendment No. 1

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

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

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

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

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

## Amendment No. 1

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

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

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

Amendment No. 1

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

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

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

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

205 836.13 Promotion of an altered sexual depiction;  
206 prohibited acts; penalties; applicability.-

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

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

Amendment No. 1

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

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

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

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

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

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

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

Amendment No. 1

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.

Amendment No. 1

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

Amendment No. 1

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

285 Section 5. Section 836.14, Florida Statutes, is created to  
286 read:

287 836.14 Unlawfully obtaining, possessing, or promoting a  
288 sexually explicit image.-

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

290 (a) "Identifiable person" has the same meaning as in s.  
291 836.13.

292 (b) "Obtain" means to appropriate to one's own use or to  
293 the use of any other person not entitled thereto.

294 (c) "Promote" has the same meaning as in s. 836.13.

295 (d) "Sexually explicit image" means any image depicting  
296 nudity as defined in s. 847.001 or a person engaging in sexual  
297 conduct as defined in s. 847.001.

298 (2) A person who knowingly and unlawfully obtains a  
299 sexually explicit image of an identifiable person with the  
300 intent to promote such image commits a felony of the third  
301 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
302 775.084.

303 (3) A person who willfully possesses a sexually explicit  
304 image of an identifiable person, without the consent of the  
305 identifiable person depicted, with the intent to promote such  
306 image for the purpose of pecuniary or any other financial gain

Amendment No. 1

307 commits a felony of the third degree, punishable as provided in  
308 s. 775.082, s. 775.083, or s. 775.084.

309 (4) A person who willfully promotes a sexually explicit  
310 image of an identifiable person for the purpose of pecuniary or  
311 any other financial gain without the identifiable person's  
312 consent commits a felony of the second degree, punishable as  
313 provided in s. 775.082, s. 775.083, or s. 775.084.

314 (5) Every act, thing, or transaction prohibited by this  
315 section constitutes a separate offense and is punishable as  
316 such.

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

321 (a) Injunctive relief.

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

325 (c) Reasonable attorney fees and costs.

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

328 (a) A provider of an interactive computer service as  
329 defined in 47 U.S.C. s. 230(f), an information service as  
330 defined in 47 U.S.C. s. 153, or a communications service as

Amendment No. 1

331 defined in s. 202.11, which provides the transmission, storage,  
332 or caching of:

333 1. Electronic communications or messages of others;

334 2. Another related telecommunications or commercial mobile  
335 radio service; or

336 3. Content provided by another person;

337 (b) A law enforcement officer, as defined in s. 943.10(1),  
338 or any local, state, federal, or military law enforcement agency  
339 that promotes a sexually explicit image in connection with the  
340 performance of his or her duties as a law enforcement officer or  
341 the duties of the law enforcement agency;

342 (c) A person reporting unlawful activity;

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

345 (e) A person promoting a sexually explicit image that  
346 resulted from the voluntary exposure of the person depicted in a  
347 public or commercial setting.

348 (8) A violation of this section is committed within this  
349 state if any conduct that is an element of the offense, or any  
350 harm to the depicted individual resulting from the offense,  
351 occurs within this state.

352 Section 6. Present subsections (7) through (11) and (12)  
353 through (20) of section 847.001, Florida Statutes, are  
354 renumbered as subsections (8) through (12) and (14) through  
355 (22), respectively, subsection (3) and present subsections (8),

527667 - h1453-line52.docx

Published On: 2/18/2022 6:50:27 PM

Amendment No. 1

356 (16), and (19) of that section, are amended, and new subsections  
357 (7) and (13) are added to that section, to read:

358 847.001 Definitions.—As used in this chapter, the term:

359 (3) "Child pornography" means:

360 (a) Any image depicting a minor engaged in sexual conduct;  
361 or

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

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

366 (a) Who was a minor at the time the image was created,  
367 altered, adapted, or modified, or whose image as a minor was  
368 used in the creation, alteration, adaptation, or modification of  
369 the image; and