

The 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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1692

INTRODUCER: Senator McClain

SUBJECT: Material that is Harmful to Minors

DATE: March 17, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	Pre-meeting
2.			ED	
3.			RC	

I. Summary:

SB 1692 amends and reenacts several sections of law pertaining to material that is harmful to minors. The bill amends s. 847.001, F.S. to remove one of the requirements that material must meet to be considered harmful to minors, if the material is in an educational setting.

The bill amends s. 1006.28, F.S., to revise what materials a parent or resident may object to. A parent or resident may object to any material used in a classroom, made available in a school or classroom library, or included in a reading list that contains content which depicts or describes sexual conduct, unless such material is *specifically authorized as part of a health education course, comprehensive health education, or approved through the State Board of Education for specific educational purposes*. The bill provides such materials must be removed within 5 school days upon receipt of an objection by a parent or resident of the county and must remain unavailable throughout the objection review process. The school board may not consider potential literary, artistic, political, or scientific value as a basis for retaining the material.

The State Board of Education (SBE) is required to monitor district compliance and notify a district of any noncompliance. Additionally, the SBE may withhold certain funds until the school district complies.

The bill takes effect on July 1, 2025.

II. Present Situation:

Freedom of Speech and the Protection of Minors

Background

Freedom of speech is guaranteed to citizens in the United States Constitution and the State Constitution.¹ As a foundational principle, this prohibits the government from dictating what people “see or read or speak or hear.”² However, there are limits to the freedom of speech; it is not absolute. Categories of speech that do not enjoy complete protection include defamation, incitement, obscenity, and pornography involving real children.³

Courts have held, as a bedrock principle of the First Amendment, that a government may not prohibit or suppress the expression of an idea simply because an audience finds the idea offensive or disagreeable.⁴ When evaluating what constitutes the free speech rights of adults, the U.S. Supreme Court held, “[W]e have made it perfectly clear that ‘[s]exual expression which is indecent but not obscene is protected by the First Amendment.’”⁵ Stated slightly differently, this means that some forms of pornography are protected under the Constitution, but obscenity is not.

The Miller Test

In 1973, the U.S. Supreme Court developed a three-prong test in *Miller v. California*,⁶ to define obscene speech. According to the Miller test, speech is determined to be obscene if:

- The average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
- The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.⁷

The *Miller* test is incorporated into the definition of what is “harmful to minors” in s. 847.001(7), F.S., and “obscenity” in s. 847.001(12), F.S.

Further, courts have found that the state has a “‘compelling interest in protecting the physical and psychological well-being of minors’ which ‘extends to shielding minors from the influence of literature that is not obscene by adult standards.’ In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material. No similar tailoring is required when the material is obscene material, which is not protected by the First Amendment.”⁸

¹The United States Constitution states, “Congress shall make no law ... abridging the freedom of speech.”

U.S. CONST. amend. I. The State Constitution similarly states “No law shall be passed to restrain or abridge the liberty of speech or of the press.” Fla. Const. art. I, s. 4.

² *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245 (2002).

³ *Id.*

⁴ *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd*, 502 U.S. 105, 118 (1991).

⁵ *Ashcroft*, 245, quoting *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).

⁶ *Miller v. California*, 413 U.S. 15 (1973).

⁷ *Id.* at 24.

⁸ *Simmons v. State*, 944 So. 2d 317 (Fla. 2006). See also *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244-45 (2002).

Obscenity Involving Minors

Federal law prohibits obscenity involving minors, and those who violate the law often face harsher penalties than if the offense involved adults only.⁹ The law prohibits any individual from knowingly transferring or attempting to transfer an obscene material using any means to a minor under 16 years of age.¹⁰ It is also prohibited for any person to knowingly produce, distribute, receive, or possess with intent to transfer or distribute material that appears to depict minors engaged in sexually explicit conduct and is deemed obscene.¹¹

The test for determining whether matter involving minors is obscene is a slightly lower threshold than the *Miller* test. Material involving minors can be considered obscene if:

- It depicts an image that is, or appears to be a minor engaged in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse; and
- The image lacks serious literary, artistic, political, or scientific value.¹²

The Court tends to grant greater protections to minors, routinely upholding state statutes that penalize those who possess or disseminate obscene material relating to minors. In *New York v. Ferber*, the defendant was convicted for distributing material that depicted a sexual performance by a minor under the age of 16 in violation of a state law that prohibited persons from knowingly promoting material that depicted such a performance.¹³ In *Ferber*, the Court held that the statute at issue did not violate the First Amendment, explaining that the states have a compelling interest, and thus are granted more leeway, in regulating pornographic depictions of children.¹⁴ The Court reasoned that such material bears so heavily on the welfare of children engaged in its production that a balance of compelling interests are struck and, therefore, these materials are not afforded the protections of the First Amendment.¹⁵

Florida Transmission of Material Harmful to Minors

Section 847.0138, F.S., provides that:

- Any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor commits a third degree felony.¹⁶
- Any person in any jurisdiction other than this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, to a specific individual known by the defendant to be a minor commits a third degree felony.^{17,18}

⁹ The United States Department of Justice, *Citizen's Guide to U.S. Federal Law on Obscenity*, available at <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity> (last visited March 24, 2021).

¹⁰ 18 U.S.C.A. s. 1470 (1998).

¹¹ 18 U.S.C.A. s. 1466A. (2003).

¹² *Id.*

¹³ *New York v. Ferber*, 458 U.S. 747 (1982).

¹⁴ *Ferber*, 458 U.S. at 756.

¹⁵ *Id.* at 747-48.

¹⁶ Section 847.0138(2), F.S.

¹⁷ Section 847.0138(3), F.S.

¹⁸ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

Section 847.001(7), F.S., defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement¹⁹ when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

K-12 Student and Parent Rights

Parents of public school students are required by law to receive accurate and timely information regarding their child’s academic progress and must be informed of ways they can help their child succeed in school.²⁰ K-12 students and their parents are afforded numerous statutory rights pertaining to student education, including reproductive health and disease education.²¹

Florida law requires district school boards to provide comprehensive health education that among other issues addresses community health, family life (including awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy), personal health, and the prevention and control of disease. One right a parent of a public school student has is to make a written request to the school principal to exempt his or her student from reproductive health and disease instruction, including instruction relating to HIV/AIDS. If such a request is made the student must be exempt from such instruction and may not be penalized.²²

Health education is included in the required instruction to ensure that students meet Florida State Board of Education (SBE) standards. Course curriculum refers to the lessons and academic content taught in a school or specific course. It may include but is not limited to a course syllabus and standards, instructional materials, or other resources an instructor may use in the class. Standards and instructional materials are subject to specific selection, adoption, and review processes.²³

Instructional Materials

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. School districts may purchase instructional materials from a list of state-reviewed and adopted instructional materials or establish their own review and adoption program. District school boards receive state funding for instructional materials through the instructional materials allocation.

Each district school board is responsible for the content of all instructional materials and any other materials used in the classroom, made available in a school library, or included on a

¹⁹ Section 847.001(20), F.S., defines “sexual excitement” as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

²⁰ Section 1002.20, F.S.

²¹ *Id.*

²² Section 1003.42(5), F.S.

²³ Florida Department of Education, Healthy Schools, *Comprehensive Health Education*, available at: <https://www.fl DOE.org/schools/healthy-schools/comprehensive-health-edu.stml> (last visited March 13, 2025).

reading list. Each district school board must maintain on its website a current list of instructional materials, purchased by the district, separated by grade level. Florida law establishes that the parent of a public school student has the right to receive effective communication from the school principal about the manner in which instructional materials are used to implement curricular objectives.²⁴

District school boards are required to adopt a policy for objections by a parent or resident of the county to the use of a specific instructional material.²⁵ The policy must clearly describe a process, in which the objector has the opportunity to provide specific evidence to the district school board, and provide for resolution. The process must provide the parent or resident the opportunity to proffer evidence to the district school board that:

- An instructional material does not meet the criteria of s. 1006.31(2), F.S.,²⁶ or s. 1006.40(3)(c), F.S.,²⁷ if it was selected for use in a course or otherwise made available to students in the school district but was not subject to the public notice, review, comment, and hearing procedures under s. 1006.283(2)(b), F.S.
- Any material used in a classroom, made available in a school or classroom library, or included in a reading list contains content which:
 - Is pornographic or prohibited under s. 847.012, F.S.;
 - Depicts or describes sexual conduct,²⁸ unless such material is for a course relating to health education and the instruction in acquired immune deficiency syndrome (AIDS),²⁹ the prevention of child sexual abuse, exploitation, and human trafficking,³⁰ the awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy for grades 6 through 12,³¹ or is identified by State Board of Education rule;
 - Is not suited to student needs and their ability to comprehend the material presented; or,
 - Is inappropriate for the grade level and age group for which the material is used.

III. Effect of Proposed Changes:

The bill amends and reenacts several sections of law pertaining to material that is harmful to minors.

²⁴ Section 1006.28(4)(a), F.S.

²⁵ Section 1006.28(2)(a)2., F.S.

²⁶ Section 1006.31(2), F.S., provides, along with additional requirements, instructional materials recommended by a reviewer must be, accurate, objective, balanced, noninflammatory, current, free of pornography and prohibited material, and suited to student needs and their ability to comprehend the material presented.

²⁷ Section 1006.40(3)(c), F.S. requires any instructional materials purchased must be free of pornography or prohibited material, suited to student needs and their ability to comprehend the material presented, and appropriate for the grade level and age group for which the materials are used or made available.

²⁸ “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated 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 simulated that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct”. Section 847.001(19), F.S.

²⁹ Section 1003.46, F.S.

³⁰ Section 1003.42(2)(o)1.g., F.S.

³¹ Section 1003.42(2)(o)3., F.S.

“Harmful to minors” is defined as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

The bill provides the third requirement regarding the literary, artistic, political, or scientific value of the content is not applicable in an educational setting.

The bill amends s. 1006.28, F.S., to revise what materials a parent or resident may object to. A parent or resident may object to any material used in a classroom, made available in a school or classroom library, or included in a reading list that contains content which depicts or describes sexual conduct, unless such material is *specifically authorized as part of a health education course, comprehensive health education, or approved through the State Board of Education for specific educational purposes.*

The bill provides such materials must be removed within 5 school days upon receipt of an objection by a parent or resident of the county and must remain unavailable throughout the objection review process. The school board may not consider potential literary, artistic, political, or scientific value as a basis for retaining the material.

The SBE is required to monitor district compliance through regular audits and reporting, notify a district of such noncompliance, and require the district to submit a corrective action plan within 30 days of receiving such notice. Additionally, the SBE may withhold the transfer of state funds, discretionary grant funds, discretionary lottery funds, or any other funds specified by the Legislature until the school district complies and may impose additional sanctions or requirements as conditions for the continued receipt of state funds.

The bill takes effect on July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require the cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution states that, “Congress shall make no law ... abridging the freedom of speech...” This language prohibits the government from having the ability to constrain the speech of citizens. However, materials that constitute child pornography, obscenity, or material harmful to minors may be restricted. Child pornography, obscenity, and material harmful to minors have been defined in ch. 847, F.S., and are consistent with federal law and the United States Supreme Court holdings regarding such laws. The bill expands the definition of material harmful to children. The expansion of such definition may subject laws relating to child pornography, obscenity, and materials harmful to children to challenges under the First Amendment.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 847.001, 1006.28, 847.012, 847.0134, 847.0138, 847.0141, 1014.05.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
