

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 398

INTRODUCER: Senator Leek

SUBJECT: Child Pornography Terminology

DATE: December 8, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	Pre-meeting
2.			CF	
3.			RC	

I. Summary:

SB 398 amends numerous sections of Florida Statutes to replace the term “child pornography” with the term “child sexual abuse material.”

The bill does not make any substantive changes to the definition of “child pornography” or the elements of any criminal offense relating to child pornography.

The bill takes effect on July 1, 2026.

II. Present Situation:

Child Pornography

The First Amendment does not protect child pornography. In *New York v. Ferber*,¹ the Supreme Court of the United States 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.”²

Child Pornography Prevention Action of 1996

In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),³ which created a definition of “child pornography.” This criminalized, for the first time, acts relating to morphed child pornography. Under the CPPA, “child pornography” was defined as:

¹ *New York v. Ferber*, 458 U.S. 747 (1982).

² *Id.* at 763.

³ Pub. L. No. 104-208, s.121.

- 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,⁴ where:
 - The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - 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);
 - Such visual depiction has been created, adapted, or modified to appear that an identifiable minor⁵ is engaging in sexually explicit conduct (i.e., morphed child pornography); or
 - 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.⁶

Florida Child Pornography Laws

Present law defines “child pornography” to mean:

- Any image depicting a minor engaged in sexual conduct; or
- Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.⁷

Florida law currently contains a variety of statutes that prohibit acts relating to child pornography. Currently, these statutes are found in two different chapters, ch. 827, F.S., relating to the abuse of children, and ch. 847, F.S., relating to obscenity.

It is unlawful for any person to possess with the intent to promote⁸ any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography.⁹ A person who violates this subsection commits a third degree felony.¹⁰

⁴ 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.).

⁵ 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 to be construed to require proof of the actual identity of the identifiable minor. 18 U.S.C. s. 2256(9) (1996 ed.).

⁶ 18 U.S.C. s. 2256(8) (1996 ed.).

⁷ Section 827.071(1)(b), F.S.

⁸ Section 827.071(1)(h), F.S., defines “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

⁹ Section 827.071(4), F.S.

¹⁰ A third degree felony is punishable by a term of imprisonment up to 5 years and a \$5,000 fine as provided in ss. 775.082, 775.083, and 775.084, F.S.

The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote.¹¹ A person who violates this subsection commits a second degree felony.¹²

Additionally, it is unlawful for any person to knowingly solicit, possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which he or she knows to include child pornography.¹³ A person who violates this section commits a third degree felony.

The provision does not apply to any material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

Child Sexual Abuse Material (CSAM)

There has been a recent push to replace the term “child pornography” with “child sexual abuse material.” Proponents of this change argue that the term “child pornography” should be avoided because:

- It fails to describe the true nature of the material and undermines the seriousness of the abuse from the child’s perspective;
- Pornography is a term primarily used to describe material depicting consensual sexual acts between adults distributed for the purpose of sexual pleasure. Using the term in this context risks normalizing, trivializing, and legitimizing the sexual abuse and exploitation of children;¹⁴ and
- Child pornography implies consent, and a child cannot legally give consent.¹⁵

The term “child pornography” is currently used in federal statutes and is defined as any visual depiction of sexually explicit conduct involving a person less than 18 years old. While this phrase still appears in federal law, “child sexual abuse material” is preferred, as it better reflects the abuse that is depicted in the images and videos and the resulting trauma to the child. In 2016, an international working group, comprising a collection of countries and international organizations working to combat child exploitation, formally recognized “child sexual abuse material” as the preferred term.¹⁶

Currently three states have passed similar legislature amending the term “child pornography” with the term “child sexual abuse material”:

¹¹ Section 827.071(4), F.S.

¹² A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine up to \$10,000, as provided in ss. 775.082, 775.083, and 775.084, F.S.

¹³ Section 827.071(5)(a), F.S.

¹⁴ IWF, *Child sexual abuse material vs. child porn’: why language matters* published on July 1, 2025, available at <https://www.iwf.org.uk/news-media/blogs/child-sexual-abuse-material-vs-child-porn-why-language-matters/> (last visited November 20, 2025).

¹⁵ INHOPE, *What is Child Sexual Abuse Material?* (2025), available at <https://www.inhope.org/EN/articles/child-sexual-abuse-material?locale=en> (last visited on November 20, 2025).

¹⁶ U.S. Department of Justice *Child Sexual Abuse Material*, available at https://www.justice.gov/d9/2023-06/child_sexual_abuse_material_2.pdf (last visited November 20, 2025).

- **Pennsylvania** – S.B. 187 amends the Child Internet Protection Act, enacted in 2004 to replace the term “child pornography with the term “child sexual abuse material.”¹⁷
- **Minnesota** – SF 2825/HF 2594 amends multiple statutes to use “child sexual abuse/child sexual material” terminology.¹⁸

Other states, including the following, have pending similar legislation:

- **Alaska** – HB 265 – An act changing the term child pornography to child sexual abuse material.¹⁹
- **Washington** – SB 5105 and related 2025 proposal to expand the statutory definitions to include fabricated AI CSAM and amend wording from child pornography to child sexual abuse material.²⁰
- **Texas** – HB 1717 – proposed bill to update statutory definitions to capture AI generated or indistinguishable depictions and to modernize language away from child pornography to CSAM terms.²¹
- **Nebraska** – LB 383 recodifies relevant offenses and replaces wording to refer to child sexual abuse material harmonizing definitions and penalties.²²

The cross-cutting reasons states have indicated for changing the terminology include:

- Victim-center language and avoiding implying consent.²³
- Reframing the language ... better enables professionals to trigger the appropriate child-protection response.²⁴

¹⁷ Pennsylvania State Legislature, *Child Internet Protection Act* available at <https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/2024/0/0092..HTM?12> (last visited November 20, 2025).

¹⁸ Minnesota Legislature, *SF 2825 A bill for an act proposing changes to terms used in statute that punishes sexually explicit materials involving children, passed June 5, 2025*, available at <https://www.revisor.mn.gov/bills/94/2025/0/SF/2825/versions/latest/> (last visited November 20, 2025).

¹⁹ Alaska Beacon *It's child sexual abuse material – not pornography, Alaska House says*, published March 14, 2024, available at <https://alaskabeacon.com/briefs/its-child-sexual-abuse-material-not-pornography-alaska-house-says/> (last visited November 20, 2025).

²⁰ The Columbian, *Washington lawmakers weigh new artificial intelligence regulations* available at <https://www.columbian.com/news/2025/feb/10/washington-lawmakers-weigh-new-artificial-intelligence-regulations/> (last visited November 20, 2025).

²¹ Texas Public Policy Foundation *Bill Analysis HB 1717*, available at <https://www.texaspolicy.com/wp-content/uploads/2025/04/2025-03-Bill-Analyses-BTT-HB1717-Gee.pdf> (last visited November 20, 2025).

²² Nebraska Legislature, *LB383 – Act to rename the Child Pornography Prevention Act (2025)* available at <https://nebraskalegislature.gov/FloorDocs/109/PDF/Final/LB383.pdf> (last visited December 2, 2025).

²³ Palm Beach Post *A Florida legislator wants to get rid of the term ‘child pornography.’ Here’s why*, available at https://www.yahoo.com/news/articles/florida-legislator-wants-rid-term-090710577.html?utm_source=chatgpt.com&gucounter=1&guce_referrer=aHR0cHM6Ly9jaGF0Z3B0LmNvbS8&guce_referrer_sig=AQAAACDad4Xh0fSM7IO_TaXS_KHmc_Ovyny0IyBSW60qvC3HOsKw6jkUYeTonHYMD4CNoGmlecCCmvDisp_7nk_kdzsRCtVVFwfpXc0S3ww43oudqmX_nAlkajiFzhLheXMJLWcxGqeTQTo-gq4f7VEX89Hh-Lfc5TKEh5xSaV1Khta (last visited on November 21, 2025).

²⁴ NSPCC Learning, *Why language matters: why we should never use ‘child pornography’ and always say child sexual abuse material*, published January 30, 2023, available at <https://learning.nspcc.org.uk/news/why-language-matters/child-sexual-abuse-material#:~:text=Referring%20to%20child%20sexual%20abuse,children%20and%20recognise%20the%20abuse.> (last visited on December 2, 2025).

- Harmonize with global use of the term.²⁵ The term CSAM is used by the Department of Justice, and the Federal Bureau of Investigations.²⁶

III. Effect of Proposed Changes:

SB 398 amends numerous sections of Florida Statutes to replace the term “child pornography” with the term “child sexual abuse material.”

The bill does not make any substantive changes to the definition of “child pornography” or the elements of any criminal offense relating to child pornography.

The term “child pornography” is replaced with “child sexual abuse material” in the following statutes:

- Section 39.0138, F.S., relating to criminal history and other records checks;
- Section 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses and human trafficking;
- Section 92.561, F.S., relating to prohibition on reproduction of child pornography;
- Section 435.07, F.S., relating to exemptions from disqualification;
- Section 456.074, F.S., relating to certain health care practitioners;
- Section 775.0847, F.S., relating to possession or promotion of certain images of child pornography;
- Section 827.071, F.S., relating to sexual performance by a child and child pornography;
- Section 827.072, F.S., relating to generated child pornography;
- Section 836.13, F.S., relating to altered sexual depictions;
- Section 836.14, F.S., relating to theft or unauthorized promotion of a sexually explicit image;
- Section 847.001, F.S., relating to definitions pertaining to offenses involving obscenity;
- Section 847.002, F.S., relating to child pornography prosecutions;
- Section 847.01357, F.S., relating to exploited children; civil remedy;
- Section 847.0137, F.S., relating to transmission of child pornography by electronic device or prohibited equipment;
- Section 847.0139, F.S., relating to immunity from civil liability for reporting child pornography, or any image, information, or data harmful to minors to a minor in this state;
- Section 903.011, F.S., relating to pretrial release;
- Section 921.0022, F.S., relating to the Criminal Punishment Code Offense Severity Ranking Chart; specifically amending the following statutes:
 - Section 827.071(5), F.S., replacing the term “child pornography” with the term “child sexual abuse material.”
 - Section 827.071(4), F.S., replacing the term “child pornography” with the term “child sexual abuse material.”
- Section 948.06, F.S., relating to violation of probation or community control;

²⁵ INHOPE guidelines, *Guidelines on Advocacy and Initiating Legislative Changes*, published July 2024, available at <https://inhope.org/media/pages/articles/inhope-guidelines-on-advocacy-initiating-legislative-changes/90ede35c40-1724148895/inhope-guidelines-on-advocacy-initiating-legislative-changes.pdf> (last visited at December 2, 2025).

²⁶ FBI Public Service Announcement: *Child Sexual Abuse Material Created by Generative AI and Similar Online Tools is Illegal*, published March 29, 2024, available at <https://www.ic3.gov/PSA/2024/PSA240329> (last visited November 20, 2025).

- Section 960.03, F.S., relating to definitions pertaining to the Florida Crimes Compensation Act; and
- Section 960.197, F.S., relating to assistance to victims of online sexual exploitation and child pornography.

The bill takes effect July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require 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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

There is a technical deficiency in the Offense Severity Ranking Chart (OSRC) in lines 470–688. The bill does not amend Level 5 of the OSRC to replace the term “pornography” with “child

sexual abuse material” in the offense descriptions contained in s. 847.0137(2) and (3), F.S. Conforming changes are required to ensure consistent terminology throughout the chart.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 39.0138, 92.56, 92.561, 435.07, 456.074, 775.0847, 827.071, 827.072, 836.13, 836.14, 847.001, 847.002, 847.01357, 847.0137, 847.0139, 903.011, 921.0022, 948.06, 960.03, 960.197 of the Florida Statutes.

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.