

## Committee on Criminal Justice

### **CS/CS/SB 1798 — Sexually Related Offenses**

by Appropriations Committee; Criminal Justice Committee; and Senator Book

The bill creates s. 836.13, F.S., to provide criminal and civil penalties for persons who promote certain altered sexual depictions. Colloquially known as “deep fakes,” these altered images often depict individuals engaging in sexual behavior that they did not engage in.

Specifically, the bill provides that a person commits a third degree felony when he or she willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction.

The bill defines “altered sexual depiction” to mean any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person: with the nude body parts of another person as the nude body parts of the identifiable person; with computer-generated nude body parts as the nude body parts of the identifiable person; or engaging in sexual conduct in which the identifiable person did not engage.

Additionally, the bill defines “promote,” to mean to 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. This definition of “promote,” is used in newly created ss. 836.13, and 836.14, F.S.

The bill creates s. 836.14, F.S., to provide criminal and civil penalties relating to theft or unauthorized promotion of a sexually explicit image. A person commits a third degree felony when he or she:

- Commits a theft of a sexually explicit image with the intent to promote such image; or
- Willfully possesses with the intent to promote a sexually explicit image for the purpose of pecuniary or any other financial gain, when he or she knows or should have known the image was obtained in violation of the offense described above.

The bill provides a higher penalty, a second degree felony, when a person willfully promotes, through the use of print media, an Internet website, or other electronic means, for the purpose of pecuniary or any type of financial gain a sexually explicit image of an identifiable person without that person’s consent.

The criminal and civil penalties created for the crimes in ss. 836.13 and 836.14, F.S., do not apply to:

- A provider of an interactive computer service, of an information service, or of a communications service which provides the transmission, storage, or caching of electronic communications or messages of others; another related telecommunications or commercial mobile radio service; or content provided by another person;

- A law enforcement officer, or any local, state, federal, or military law enforcement agency that disseminates a sexually explicit image in connection with the performances of his or her duties;
- A person reporting unlawful activity; or
- A person participating in a hearing, trial, or other legal proceeding.

Additionally, the criminal and civil penalties created for the crimes in s. 863.14, F.S., do not apply to sexually explicit images:

- Involving voluntary exposure in a public or commercial setting; or
- Possessed or promoted by a bona fide news media organization for a legitimate and newsworthy purpose.

The felony offenses created in the bill are ranked in the offense severity ranking chart of the Criminal Punishment Code.

The bill expands the term “child pornography” to include 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.

The bill provides that “identifiable minor” means a person:

- Who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and
- 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.

This term may not be construed to require proof of the actual identity of the identifiable minor.

The bill further amends s. 827.071, F.S., to replace the phrase “any sexual conduct by a child,” with the term “child pornography.” The term “child pornography,” includes images depicting any sexual conduct by a child.

The bill amends s. 775.0847, F.S., to replace the term “movie” with “motion picture, film, video, or computer-generated motion picture, film, or video,” for purposes of enhancing specified offenses relating to child sexual abuse material or obscenity.

The bill increases the minimum monetary damages from \$5,000 to \$10,000 that a victim of sexual cyberharassment may receive as a result of a civil action.

The bill provides that a law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe possesses a child-like sex doll.

The bill amends s. 828.126, F.S., to remove the term “sexual conduct” and revise the term “sexual contact with an animal,” to encompass acts previously defined under “sexual conduct.”

The bill amends the prohibited conduct to include that a person may not knowingly: advertise, offer, solicit, or accept an offer of an animal for the purpose of sexual contact with such animal; or film, distribute, or possess any pornographic image or video of a person and an animal engaged in any prohibited acts related to sexual activities involving an animal.

The bill increases the penalty for sexual contact with an animal from a first degree misdemeanor to a third degree felony, and provides that the court must issue an order prohibiting a convicted person from specified behaviors that place them in close proximity to an animal. The bill also provides exceptions from criminal liability. This offense is ranked in the offense severity ranking chart of the Criminal Punishment Code.

If approved by the Governor, these provisions take effect October 1, 2022.

*Vote: Senate 37-0; House 117-0*