

By Senator Geller

29-993-00

1 A bill to be entitled
2 An act relating to pornography; amending s.
3 847.001, F.S.; defining the term "child
4 pornography" for purposes of ch. 847, F.S.;
5 providing that it is a crime in this state for
6 a person within the state to use the Internet
7 to transmit harmful material to a minor within
8 or outside of the state if the person knows or
9 should have known that the person receiving the
10 transmission is a minor; providing that it is a
11 crime in this state for a person within the
12 state to use the Internet to transmit child
13 pornography to a person located within or
14 outside of the state; providing that it is a
15 crime in this state for a person outside of the
16 state to use the Internet to transmit child
17 pornography to a person located within the
18 state; providing penalties; providing an
19 effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Section 847.001, Florida Statutes, is
24 amended to read:

25 847.001 Definitions.--When used in this chapter:

26 (1) "Child pornography" means the visual depiction of
27 sexual conduct of or with a minor.

28 ~~(2)(1)~~ "Computer" means an electronic, magnetic,
29 optical, electrochemical, or other high-speed data processing
30 device performing logical, arithmetic, or storage functions
31 and includes any data storage facility or communications

1 facility directly related to or operating in conjunction with
2 such device. The term also includes: any on-line service,
3 Internet service, or local bulletin board; any electronic
4 storage device, including a floppy disk or other magnetic
5 storage device; or any compact disc that has read-only memory
6 and the capacity to store audio, video, or written materials.

7 (3)~~(2)~~ "Deviate sexual intercourse" means sexual
8 conduct between persons not married to each other consisting
9 of contact between the penis and the anus, the mouth and the
10 penis, or the mouth and the vulva.

11 (4)~~(3)~~ "Harmful to minors" means that quality of any
12 description, exhibition, presentation, or representation, in
13 whatever form, of nudity, sexual conduct, or sexual excitement
14 when it:

15 (a) Predominantly appeals to the prurient, shameful,
16 or morbid interest of minors;

17 (b) Is patently offensive to prevailing standards in
18 the adult community as a whole with respect to what is
19 suitable material for minors; and

20 (c) Taken as a whole, is without serious literary,
21 artistic, political, or scientific value for minors.

22
23 A mother's breastfeeding of her baby is not under any
24 circumstance "harmful to minors."

25 (5)~~(4)~~ "Minor" means any person under the age of 18
26 years.

27 (6)~~(5)~~ "Nudity" means the showing of the human male or
28 female genitals, pubic area, or buttocks with less than a
29 fully opaque covering; or the showing of the female breast
30 with less than a fully opaque covering of any portion thereof
31 below the top of the nipple; or the depiction of covered male

1 genitals in a discernibly turgid state. A mother's
2 breastfeeding of her baby does not under any circumstance
3 constitute "nudity," irrespective of whether or not the nipple
4 is covered during or incidental to feeding.

5 (7)~~(6)~~ "Person" includes individuals, firms,
6 associations, corporations, and all other groups and
7 combinations.

8 (8)~~(7)~~ "Obscene" means the status of material which:

9 (a) The average person, applying contemporary
10 community standards, would find, taken as a whole, appeals to
11 the prurient interest;

12 (b) Depicts or describes, in a patently offensive way,
13 sexual conduct as specifically defined herein; and

14 (c) Taken as a whole, lacks serious literary,
15 artistic, political, or scientific value.

16
17 A mother's breastfeeding of her baby is not under any
18 circumstance "obscene."

19 (9)~~(8)~~ "Sadomasochistic abuse" means flagellation or
20 torture by or upon a person or animal, or the condition of
21 being fettered, bound, or otherwise physically restrained, for
22 the purpose of deriving sexual satisfaction, or satisfaction
23 brought about as a result of sadistic violence, from
24 inflicting harm on another or receiving such harm oneself.

25 (10)~~(9)~~ "Sexual battery" means oral, anal, or vaginal
26 penetration by, or union with, the sexual organ of another or
27 the anal or vaginal penetration of another by any other
28 object; however, "sexual battery" does not include an act done
29 for a bona fide medical purpose.

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1 ~~(11)~~~~(10)~~ "Sexual bestiality" means any sexual act
2 between a person and an animal involving the sex organ of the
3 one and the mouth, anus, or vagina of the other.

4 ~~(12)~~~~(11)~~ "Sexual conduct" means actual or simulated
5 sexual intercourse, deviate sexual intercourse, sexual
6 bestiality, masturbation, or sadomasochistic abuse; actual
7 lewd exhibition of the genitals; actual physical contact with
8 a person's clothed or unclothed genitals, pubic area,
9 buttocks, or, if such person is a female, breast; or any act
10 or conduct which constitutes sexual battery or simulates that
11 sexual battery is being or will be committed. A mother's
12 breastfeeding of her baby does not under any circumstance
13 constitute "sexual conduct."

14 ~~(13)~~~~(12)~~ "Sexual excitement" means the condition of
15 the human male or female genitals when in a state of sexual
16 stimulation or arousal.

17 ~~(14)~~~~(13)~~ "Simulated" means the explicit depiction of
18 conduct described in subsection~~(12)~~~~(11)~~ which creates the
19 appearance of such conduct and which exhibits any uncovered
20 portion of the breasts, genitals, or buttocks.

21 Section 2. Section 847.0137, Florida Statutes, is
22 created to read:

23 847.0137 Transmission of pornography by use of the
24 Internet prohibited; penalties.--

25 (1) Any person within this state or outside this state
26 who uses the Internet to transmit any type of harmful material
27 to a minor within this state in violation of s. 847.012, and
28 who knows or should have known that the person receiving the
29 transmission is a minor, commits a felony in this state of the
30 third degree, punishable as provided in s. 775.082, s.
31 775.083, or s. 775.084.

1 (2) Any person within this state who uses the Internet
2 to transmit child pornography to a person located in this
3 state or located outside this state commits a felony in this
4 state of the third degree, punishable as provided in s.
5 775.082, s. 775.083, or s. 775.084.

6 (3) Any person outside this state who uses the
7 Internet to transmit child pornography to a person located in
8 this state commits a felony in this state of the third degree,
9 punishable as provided in s. 775.082, s. 775.083, or s.
10 775.084.

11 Section 3. This act shall take effect July 1, 2000.

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SENATE SUMMARY

Defines the term "child pornography." Provides that it is a third-degree felony for a person within the state to use the Internet to transmit harmful material to a minor within or outside the state if the person knows or should have known that the person receiving the transmission is a minor. Provides that it is a third-degree felony for a person within the state to use the Internet to transmit child pornography to a person located within or outside the state. Provides that it is a third-degree felony for a person outside the state to use the Internet to transmit child pornography to a person located within the state.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.