

**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 Education Pre-K - 12 Committee

BILL: SB 536

INTRODUCER: Senator Flores

SUBJECT: Sale or Distribution of Obscene Materials to a Minor

DATE: January 4, 2012 REVISED: 1/9/12 \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Brown	deMarsh-Mathues	ED	<b>Fav/1 amendment</b>
2.		CJ	
3.			
4.			
5.			
6.			

**Please see Section VIII. for Additional Information:**

- |                              |                                     |                                         |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/>            | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input checked="" type="checkbox"/> | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill provides that it is a third-degree felony for a person to knowingly sell or distribute obscene material to a minor or to post obscene materials on public and private school property. The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school.

This bill substantially amends section 847.012 of the Florida Statutes.

**II. Present Situation:**

**Definition of “Harmful to Minors”**

Currently, the law provides for a three-pronged test to determine whether material is harmful to minors. Florida law 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 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.<sup>1</sup>

### **“Obscene” Materials**

Chapter 847, F.S., addresses the regulation of obscenity, and provides several definitions that are used in the chapter. An adult is defined as a person of at least 18 years of age.<sup>2</sup> A minor, likewise, is considered to be someone who is under the age of 18 years.<sup>3</sup> The term “obscene” is defined as the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct<sup>4</sup>; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>5</sup>

Currently, it is a first-degree misdemeanor<sup>6</sup> for a person to knowingly distribute, sell, lend, give away, transmit, transmute, or show certain obscene materials.<sup>7</sup> It is a second-degree misdemeanor<sup>8</sup> for a person to knowingly have certain obscene material in one’s possession, custody, or control.<sup>9</sup>

### **Selling or Distributing Harmful Materials to Minors**

Current law provides that it is a third-degree felony<sup>10</sup> to knowingly sell, rent, or loan for monetary consideration to a minor:<sup>11</sup>

- Any picture, photograph, drawing, sculpture, motion picture film, videotape, or similar visual representation or image of a person or portion of the human body which

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<sup>1</sup> s. 847.001(6), F.S.

<sup>2</sup> s. 847.001(1), F.S.

<sup>3</sup> s. 847.001(8), F.S.

<sup>4</sup> s. 847.001(16), F.S., defines “sexual conduct” as “actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual 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 simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute ‘sexual conduct.’”

<sup>5</sup> s. 847.001(10), F.S.

<sup>6</sup> A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year, and a fine not exceeding \$1,000 may be imposed. *See ss. 775.082 and 775.083, F.S.*

<sup>7</sup> s. 847.011(1)(a), F.S. However, it is a third-degree felony if a violation is based on materials that depict a minor engaged in any act or conduct that is harmful to minors. *See s. 847.011(1)(c), F.S.*

<sup>8</sup> A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, and a fine not exceeding \$500 may be imposed. *See ss. 775.082 and 775.083, F.S.*

<sup>9</sup> s. 847.011(2), F.S. However, it is a third-degree felony if a violation is based on materials that depict a minor engaged in any act or conduct that is harmful to minors. *See s. 847.011(1)(c), F.S.*

<sup>10</sup> A third-degree felony is punishable by a state prison sentence not exceeding five years, and a fine not exceeding \$5,000 may be imposed. *See ss. 775.082 and 775.083, F.S.*

<sup>11</sup> s. 847.012(5), F.S.

- depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The term “knowingly” is defined as having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- The character and content of any material (described above) which is reasonably susceptible of examination by the defendant; and
- The age of the minor.<sup>12</sup>

A person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent may not be raised as a defense in a prosecution for a violation of s. 847.012, F.S.<sup>13</sup>

### **III. Effect of Proposed Changes:**

Under the bill, it would be a third-degree felony to knowingly sell or distribute obscene material to a minor or post obscene materials on public and private school property. The bill defines school property as the grounds or facility of any public or private kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school.

This new offense would be punishable by up to five years in prison and a \$5,000 fine.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>12</sup> s 847.012(1), F.S.

<sup>13</sup> s. 847.012(2), F.S.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill creates an additional criminal offense. The Criminal Justice Impact Conference (CJIC) has not yet met to consider the prison bed impact, if any, of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:****Barcode 532532 by the Committee on Pre-K – 12 on January 9, 2012:**

Further describes the criminal third degree felony created by this bill in the title of the bill for clarification and notice purposes.