

## Council Substitute for House Bill No. 559

An act relating to material harmful to minors; amending s. 847.001, F.S.; redefining the term “harmful to minors”; amending s. 847.011, F.S.; providing that it is a third-degree felony for any person to sell, distribute, transmit, advertise, or possess with the intent to sell, distribute, transmit, or advertise certain materials to minors; providing that ignorance of a minor’s age or the minor’s consent is not a defense in a prosecution for such a violation; providing penalties; amending s. 847.012, F.S.; prohibiting a person from knowingly using a minor in the production of certain materials, regardless of whether those materials are intended for distribution to minors or actually distributed to minors; providing a penalty; providing that ignorance of a minor’s age or the minor’s consent is not a defense in a prosecution for specified violations; amending s. 847.013, F.S.; providing that ignorance of a minor’s age or the minor’s consent is not a defense in a prosecution for specified violations; revising legislative intent concerning the enforcement of such laws with respect to minors; amending s. 847.0133, F.S.; revising terminology; amending s. 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code; establishing offense levels to conform to changes made by the act; providing an exemption to sections amended by this act for providers of communications services and providers of information services in certain circumstances; providing an effective date.

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

Section 1. Subsection (6) of section 847.001, Florida Statutes, is amended to read:

847.001 Definitions.—As used in this chapter, the term:

(6) “Harmful to minors” means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

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

(b) 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

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

A mother’s breastfeeding of her baby is not under any circumstance “harmful to minors.”

Section 2. Subsections (1) and (2) of section 847.011, Florida Statutes, are amended to read:

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—

(1)(a) Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, ~~commits is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, ~~commits is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The knowing possession by any person of three or more identical or similar materials, matters, articles, or things coming within the provisions of paragraph (a) is prima facie evidence of the violation of the said paragraph.

(c) A person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) 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 one or more violations of paragraph (a) or subsection (2).

(2) Except as provided in paragraph (1)(c), a person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed

story or article, writing, paper, card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, ~~commits is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions ~~commits is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it ~~is shall~~ not be necessary to allege or prove the absence of such intent.

Section 3. Section 847.012, Florida Statutes, is amended to read:

847.012 Harmful materials; Prohibition of sale or other distribution of harmful materials to minors or using minors in production prohibited persons under 18 years of age; penalty.—

(1) As used in this section, “knowingly” means having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(a) The character and content of any material described in this section herein which is reasonably susceptible of examination by the defendant; and

(b) The age of the minor; ~~however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.~~

(2) 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 this section.

~~(3)~~(2) A ~~It is unlawful for any person~~ may not knowingly to sell, rent, or loan for monetary consideration to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording ~~that which~~ contains any matter defined in s. 847.001, explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and ~~that which~~ is harmful to minors.

(4) A person may not knowingly use a minor in the production of any material described in subsection (3), regardless of whether the material is intended for distribution to minors or is actually distributed to minors.

~~(5)(3)~~ Any person violating any provision of this section ~~commits is guilty~~ of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(6)(4)~~ Every act, thing, or transaction forbidden by this section constitutes a separate offense and is punishable as such.

~~(7)(5)(a)~~ The circuit court has jurisdiction to enjoin a violation of this section upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney requests a judge of such court to set a hearing upon an application for ~~such~~ a restraining order, ~~the such~~ judge shall set ~~the such~~ hearing for a time within 3 days after the making of ~~the such~~ request. ~~The No such~~ order ~~may not~~ shall be made unless ~~the such~~ judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for ~~the such~~ restraining order is to be made.

(c) The person sought to be enjoined ~~is shall be~~ entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days ~~after~~ of the conclusion of the trial.

(d) ~~If In the event that~~ a final decree of injunction is entered, it ~~must shall~~ contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of her or his compliance.

(e) In any action brought as provided in this section, ~~a no~~ bond or undertaking ~~may not shall~~ be required of the state or the state attorney before the issuance of a restraining order provided for by paragraph (b), and ~~there shall be no liability on the part of~~ the state or the state attorney ~~may not be held liable~~ for costs or for damages sustained by reason of ~~the such~~ restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon her or him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

~~(8)(6)~~ The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

~~(9)(7)~~ This section does not apply to the exhibition of motion pictures, shows, presentations, or other representations regulated under the provisions of s. 847.013.

Section 4. Section 847.013, Florida Statutes, is amended to read:

847.013 Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.—

(1) “KNOWINGLY” DEFINED.—As used in this section “knowingly” means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(a) The character and content of any motion picture described herein which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation, or show described herein, other than a motion picture show, which is reasonably susceptible of being ascertained by the defendant;<sup>5</sup> and

~~(b) The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.~~

(2) MINOR’S AGE.—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 this section.

~~(3)(2)~~ OFFENSES AND PENALTIES.—

~~(a) A It is unlawful for any person may not knowingly to exhibit for a monetary consideration to a minor or knowingly to sell or rent a videotape of a motion picture to a minor or knowingly sell to a minor an admission ticket or pass or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.~~

~~(b) A It is unlawful for any person may not knowingly to rent or sell, or loan to a minor for monetary consideration, a videocassette or a videotape of a motion picture, or similar presentation, which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.~~

(c) The provisions of paragraph (a) do not apply to a minor when the minor is accompanied by his or her parents or either of them.

~~(d) A It is unlawful for any minor may not to falsely represent to the owner of any premises mentioned in paragraph (a), or to the owner’s agent, or to any person mentioned in paragraph (b), that the such minor is 17 years of age or older, with the intent to procure the such minor’s admission to such premises, or the such minor’s purchase or rental of a videotape, for a monetary consideration.~~

(e) ~~It is unlawful for any person~~ may not ~~to~~ knowingly make a false representation to the owner of any premises mentioned in paragraph (a), or to the owner's agent, or to any person mentioned in paragraph (b), that he or she is the parent of any minor or that any minor is 17 years of age or older, with intent to procure the ~~such~~ minor's admission to the ~~such~~ premises or to aid the ~~such~~ minor in procuring admission thereto, or to aid or enable the ~~such~~ minor's purchase or rental of a videotape, for a monetary consideration.

(f) A violation of any provision of this subsection constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

#### (4)(3) INJUNCTIVE PROCEEDINGS.—

(a) The circuit court has jurisdiction to enjoin a threatened violation of subsection (2) upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person or persons complained of until final hearing or further order of the court. Whenever the relator requests a judge of the ~~such~~ court to set a hearing upon an application for ~~such~~ a restraining order, the ~~such~~ judge shall set the ~~such~~ hearing for a time within 3 days after the making of the ~~such~~ request. ~~An~~ No ~~such~~ order may not ~~shall~~ be made unless the ~~such~~ judge is satisfied that sufficient notice of the application therefor has been given to the person or persons restrained of the time when and place where the application for the ~~such~~ restraining order is to be heard. However, the ~~such~~ notice shall be dispensed with when it is manifest to the ~~such~~ judge, from the allegations of a sworn complaint or independent affidavit, sworn to by the relator or by some person associated with him or her in the field of law enforcement and filed by the relator, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person or persons sought to be enjoined are ~~shall be~~ entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(d) In any action brought as provided in this section, ~~a~~ no bond or undertaking ~~is not~~ ~~shall be~~ required of the state or the relator state attorney before the issuance of a restraining order provided for by this section, and there ~~is~~ ~~shall be~~ no liability on the part of the state or the relator state attorney for costs or damages sustained by reason of such restraining order in any case in which a final decree is rendered in favor of the person or persons sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any motion picture, exhibition, show, representation, or presentation described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents or character thereof.

(5)(4) LEGISLATIVE INTENT.—In order to make the application and enforcement of this section uniform throughout the state, it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons under 17 years of age to harmful motion pictures, exhibitions, shows, representations, ~~and presentations, and commercial or sexual exploitation.~~ To that end, it is hereby declared that every county ordinance and every municipal ordinance adopted prior to July 1, 1969, and relating to such subject shall stand abrogated and unenforceable on and after such date and that no county, municipality, or consolidated county-municipal government shall have the power to adopt any ordinance relating to that subject on or after such effective date.

Section 5. Subsection (1) of section 847.0133, Florida Statutes, is amended to read:

847.0133 Protection of minors; prohibition of certain acts in connection with obscenity; penalty.—

(1) ~~A~~ It is unlawful for any person ~~may not~~ knowingly to sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. For purposes of this section “obscene material” means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose. The term “obscene” has ~~shall have~~ the same meaning as set forth in s. 847.001.

Section 6. Paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Forgery of pedigree papers.
499.0051(4)	2nd	Purchase or receipt of legend drug from unauthorized person.
499.0051(5)	2nd	Sale of legend drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.

Florida Statute	Felony Degree	Description
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.



Florida Statute	Felony Degree	Description
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
827.03(1)	3rd	Abuse of a child.
827.03(3)(c)	3rd	Neglect of a child.
827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
<u>847.011</u>	<u>3rd</u>	<u>Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.</u>
<u>847.012</u>	<u>3rd</u>	<u>Knowingly using a minor in the production of materials harmful to minors.</u>
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

Florida Statute	Felony Degree	Description
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 7. The amendments to ss. 847.012, 847.011, 847.013, and 847.0133, Florida Statutes, by this act do not apply to providers of communications services as defined in s. 202.11, Florida Statutes, or to providers of information services, including, but not limited to, Internet access service providers and hosting service providers, when they only provide the transmission, storage, or caching of electronic communications or messages of others or provide other related communications or information services used by others in violation of such amended provisions. This exemption shall not apply to providers of communications services as defined in s. 202.11, Florida Statutes, or providers of information services that knowingly for commercial advantage or private financial gain facilitate the specific violation of such amended provisions by others.

Section 8. This act shall take effect July 1, 2008.

Approved by the Governor June 10, 2008.

Filed in Office Secretary of State June 10, 2008.