

CHAPTER 2011-180

Committee Substitute for Committee Substitute for House Bill No. 75

An act relating to the offense of sexting; providing that a minor commits the offense of sexting if he or she knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors; providing that a minor commits the offense of sexting if he or she knowingly possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors; providing an exception; providing noncriminal and criminal penalties; providing that the transmission, distribution, or possession of multiple photographs or videos is a single offense if the transmission occurs within a 24-hour period; providing that the act does not prohibit prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement or for stalking; defining the term “found to have committed”; providing an effective date.

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

Section 1. Sexting; prohibited acts; penalties.—

(1) A minor commits the offense of sexting if he or she knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in s. 847.001(9), Florida Statutes, and is harmful to minors, as defined in s. 847.001(6), Florida Statutes.

(b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity, as defined in s. 847.001(9), Florida Statutes, and is harmful to minors, as defined in s. 847.001(6), Florida Statutes. A minor does not violate paragraph this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video.
2. The minor took reasonable steps to report the photograph or video to the minor’s legal guardian or to a school or law enforcement official.
3. The minor did not transmit or distribute the photograph or video to a third party.

(2)(a) The transmission or distribution of multiple photographs or videos prohibited by paragraph (1)(a) is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.

(b) The possession of multiple photographs or videos that were transmitted or distributed by a minor prohibited by paragraph (1)(b) is a single offense if the photographs or videos were transmitted or distributed by a minor in the same 24-hour period.

(3) A minor who violates subsection (1):

(a) Commits a noncriminal violation for a first violation, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. The court may also order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine.

(b) Commits a misdemeanor of the first degree for a violation that occurs after being found to have committed a noncriminal violation for sexting, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(c) Commits a felony of the third degree for a violation that occurs after being found to have committed a misdemeanor of the first degree for sexting, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

(4) This section does not prohibit the prosecution of a minor for a violation of any law of this state if the photograph or video that depicts nudity also includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, Florida Statutes.

(5) As used in this section, the term “found to have committed” means a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld.

Section 2. This act shall take effect October 1, 2011.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.