

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal and Civil Justice Appropriations Committee

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BILL: CS/SB 1004

INTRODUCER: Criminal and Civil Justice Appropriations Committee, and Senator Argenziano

SUBJECT: Relating to Child Pornography/Computers

DATE: February 23, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	<u>Butler</u>	<u>Sadberry</u>	<u>JA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill enhances the tools available to prosecute sexual abuse of children. Its provisions:

- Enhance penalties for existing crimes related to possession of images of sexual abuse of children (commonly referred to as child pornography) when the offender possesses ten or more images and at least one image includes a child under the age of five; sadomasochistic abuse, sexual battery or sexual bestiality involving a child; or any video or live movie involving a child.
- Expand the scope of s. 847.0135, F.S., concerning use of the Internet to seduce, solicit, lure or entice a child or a person thought to be a child to commit certain acts relating to sexual abuse of children. The expanded scope includes all acts of sexual conduct with a child or a person thought to be a child, includes actions directed at persuading the child's guardian to consent to the child's participation in sexual conduct, and provides that each separate contact is a separate offense. The section also creates a new second degree felony that applies to offenders who misrepresent their age in the course of committing an offense under s. 847.0135(3), F.S.
- Create a new felony offense of traveling to meet a minor for the purpose of committing specified crimes of sexual abuse of a child or any other unlawful sexual conduct with a child, or attempting to persuade the child's guardian to consent to the child's participation in sexual conduct.
- Require that sexual offenders and sexual predators register any e-mail address and any instant message name with the Florida Department of Law Enforcement (FDLE) prior to using it on or after October 1, 2007, and to update any changes to the information.
- Require FDLE to establish a method for offenders to register e-mail addresses and instant message names online.

- Authorize FDLE to provide the e-mail addresses and instant message names of sexual offenders and sexual predators to commercial social networking websites, which will enable operators of the sites to screen for those users. The act expressly states that it does not impose civil liability on commercial social networking websites.
- Authorize prosecutors to charge an act that violates s. 827.071, F.S., (relating to sexual performance of a child) or s. 847.0135, F.S., (relating to child pornography) under any other applicable statute, including one with greater penalties.
- Expand the investigative and prosecutorial authority of the Office of Statewide Prosecution (OSP) and the subject matter jurisdiction of the statewide grand jury to include violations of ch. 827, F.S., (concerning abuse of children) when the crime is facilitated by or connected to use of the Internet or an electronic data storage or transmission device, and by deeming that crimes facilitated by or connected to use of the Internet occur simultaneously in every Florida judicial circuit. OSP jurisdiction is expanded to include any crime facilitated by or connected to use of the Internet.
- Authorize alternative venues for trial of any crime facilitated by communication by mail, telephone, newspaper, radio, television, Internet, or other means of electronic data communication.
- Update statutes to incorporate newer technologies that are used to facilitate sexual abuse of children and transfer of images of sexual abuse of children.

This bill substantially amends sections 16.56, 775.21, 827.071, 847.0135, 905.34, 910.15, 921.0022, 943.0435, 944.606, and 944.607 and creates sections 775.0847 and 943.0437 of the Florida Statutes.

## **II. Present Situation:**

The accessibility and apparent anonymity of the Internet has expanded opportunities for sexual abusers to victimize children. In response, law enforcement agencies throughout the United States and in other developed countries have increased their efforts to thwart these attempts. In Florida, the Child Predator CyberCrime Unit was established in 2005 within the Attorney General's Office of Statewide Prosecution. The unit includes law enforcement investigators and prosecutors whose primary mission is to target child predators, child pornography, and Internet-based sexual exploitation of children. The unit has reportedly shown success despite being hampered by jurisdictional limitations and the inapplicability of current laws to some new technologies and methods.

The popularity of commercial social networking sites, such as MySpace, has increased opportunities for undesirable persons to interact with young people. In some cases, this interaction can lead to sexual abuse and other forms of exploitative or criminal conduct. Social networking sites may include personal web pages with information provided by the user, online chat services, and other forms of interaction. MySpace reports that it is the largest website in the world as measured by page views – 40.9 billion views each month. It has 61 million monthly users in the United States and gains approximately 208,000 new registrants each day, with approximately 15 percent of the users between the ages of 14 and 18 years old. MySpace has barriers to prevent adults from contacting minors through the service and to prevent access of minors to adult areas. It also screens content (including photos and videos) that is uploaded to the site. The company is working on methods to verify identity and age, and maintains a

consolidated database of state and local sex offender registries to attempt to stop sexual offenders from using the service. However, most sex offender registries do not include information concerning e-mail address or instant message names.<sup>1</sup>

### ***Child Pornography Laws***

The following sections of the Florida Statutes include the offenses most commonly charged in relation to the possession, production, or transmission of child pornography:

- Section 827.071(4), F.S., provides that it is a 2nd degree felony, ranked at Level 5 of the Criminal Punishment Code, to possess a photograph, motion picture, exhibition, show, representation, or other presentation that includes any sexual conduct by a child with intent to promote the item. Possession of three or more copies of such items is prima facie evidence of intent to promote.
- Section 827.071(5), F.S., makes possession of any item listed in subsection (5) with knowledge that it includes sexual conduct by a child a 3rd degree felony ranked at Level 5 of the Criminal Punishment Code. Possession of each item is a separate offense.
- Section 847.0135(2), F.S., prohibits any use of a computer in connection with distributing information about any minor for the purpose of facilitating, encouraging, offering, or soliciting sexual conduct of or with a minor, or a visual depiction of such conduct. Violation is a 3rd degree felony ranked at Level 6.
- Section 847.0135(3), F.S., makes it a 3rd degree felony ranked at Level 7 to knowingly use an on-line service, Internet service, or local bulletin board service in order to try to get a child or person thought to be a child to commit an illegal act of sexual battery, lewdness or indecent exposure, or child abuse.
- Section 847.0137, F.S., provides that a person commits a 3rd degree felony ranked at Level 5 by transmitting child pornography to another person when the transmitter knew or should have known that the item was child pornography. The term “transmit” includes sending any image, information, or data through the Internet or other medium by use of electronic equipment or an electronic device.
- Section 847.138, F.S., prohibits knowingly sending, or believing that one has sent, material that is harmful to minors by means of electronic mail to a specific individual known to be a minor. “Harmful to minors” is defined in s. 847.001, F.S., and includes any kind or form of representation that depicts nudity, sexual conduct, or sexual excitement predominately appealing to the prurient, shameful, or morbid interest of minors; that is patently offensive to prevailing standards in the adult community as to what is suitable material for minors; and that is without serious literary, artistic, political, or scientific value for minors when considered as a whole. The offense is a 3rd degree felony ranked at Level 5.

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<sup>1</sup> Information concerning MySpace is from a presentation made by Mr. Hemanshu Nigam, Chief Security Officer of Fox Interactive Media and MySpace, to the Florida House of Representatives Committee on Homeland Security & Public Safety on February 7, 2007.

Chapter 910, F.S., covers jurisdiction and venue issues. Section 910.15, F.S., provides that persons charged with committing a fraudulent practice in a manner in which it may reasonably be assumed that a communication made to facilitate the fraudulent practice could or would be disseminated across jurisdictional lines, or theft involving use of mail, telephone, newspaper, radio, television, or other means of communication, may be tried in the county where the dissemination originated, where it was made, or where any act necessary to consummate the offense occurred.

#### ***Office of Statewide Prosecutor and Statewide Grand Jury***

The Office of Statewide Prosecution (OSP) was created by constitutional amendment in 1986. Its jurisdiction and authority are set forth in s. 16.56, F.S. and Article IV, Section 4 of the Florida Constitution. In order for OSP to handle a case, the crime must have occurred in more than one judicial circuit or be part of an organized conspiracy affecting more than one judicial circuit, and it must be an offense enumerated in the law. Violations of s. 847.0135, F.S., and offenses relating to violation of s. 847.0135, F.S., are included within the OSP's jurisdiction. OSP does not have authority to investigate or prosecute violations of ch. 827, F.S.

The subject matter jurisdiction of the statewide grand jury as set forth in s. 905.34, F.S., parallels the OSP's investigative and prosecutorial authority.

#### ***Sexual Predator and Sexual Offender Registration***

Designation as a sexual predator under s. 775.21(4), F.S., or as a sexual offender under s. 943.0435, F.S., subjects the predator or offender to registration and community and public notification requirements. Information that must be provided to FDLE includes the person's name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, photograph, legal residence address and current address, date and place of employment, date and place of each conviction, fingerprints, and a brief description of each crime committed. A non-exhaustive summary of the reporting requirement is as follows:

- The predator or offender must report in person to the county sheriff's office within 48 hours of establishing a permanent or temporary residence in Florida, or of being released from custody or supervision of DOC or a private correctional facility. There are also reporting requirements for predators and offenders while they are in custody or under supervision.
- Within 48 hours of making the required report at the sheriff's office, the predator or offender must obtain a Florida driver's license or identification card. In the course of this process, the person must identify him or herself as a sexual predator or sexual offender, show proof of having reported to the sheriff's office, and provide any of the specified information upon request.
- Report any changes in residence or name at a driver's license office, and at the local sheriff's office for change of address, within 48 hours of the change.
- Failure to register or update the registered information as required is a third degree felony, except some specific violations that constitute a second degree felony.

### III. Effect of Proposed Changes:

*Section 1* of the bill provides that it may be cited as the “Cybercrimes Against Children Act.”

*Section 2* of the bill amends s. 16.56, F.S., to include violations of ch. 827, F.S., concerning abuse of children, within the authority of the Office of Statewide Prosecution when the crime is facilitated by or connected to use of the Internet or an electronic data storage or transmission device. It also expands OSP’s jurisdiction to include any crime that is facilitated by or connected to use of the Internet and provides that such crimes occur in every judicial circuit. Placing such crimes in OSP’s subject-matter jurisdiction and providing that the crime occurs in more than one judicial circuit allows OSP to investigate and prosecute any Internet-related offense.

*Section 3* creates a new s. 775.0847, F.S., that reclassifies existing crimes related to child pornography to a higher offense level. The trigger for reclassification is possession of ten or more images of any form of child pornography, with at least one image including one or more of the following:

- A child under the age of 5.
- Sadomasochistic abuse involving a child, sexual battery involving a child, or sexual bestiality involving a child.
- Any video or live movie involving a child.

The section includes relevant definitions, which are similar or identical to the definitions of the same terms found in s. 847.001, F.S.

Reclassification will result in raising the offense by one level in the Criminal Punishment Code’s Offense Severity Ranking Chart, found in s. 921.0022, F.S. The effect of this would be to increase the Total Offense Score that is derived from the Criminal Punishment Code Worksheet. As an example, enhancement of a violation of s. 847.0135(2), F.S., a Level 6 offense, would increase the lowest permissible sentence for an offender with no prior criminal record from a non-prison sanction to 21 months in prison. Enhancement of the other offenses affected by the provision would have less dramatic effect, but could still result in imprisonment for an offender who would otherwise get probation, or a longer sentence for an offender who is sentenced to prison.

*Section 4* amends s. 775.21, F.S., the Florida Sexual Predators Act, to require designated sexual predators to register any electronic mail address and any instant message name with FDLE prior to use on or after October 1, 2007. It also requires FDLE to create a secure online method to register the information. Because registration is online, there is no need for the 48-hour grace period that is applicable to other registration information. The sexual predator is also required to keep the information up-to-date in the same manner as is required for a change of residence.

*Section 5* amends s. 827.071, F.S., to expressly state that a prosecutor can charge a person whose acts violate this provision of law under any other statute that is also violated by the acts. The purpose of this amendment is to allow the prosecutor to charge the offense with the greatest penalty, rather than being restricted to charging under the statute that most specifically includes the conduct.

**Section 6** of the bill includes significant amendments to the Computer Pornography and Child Exploitation Prevention Act which constitutes s. 847.0135, F.S., and is within the subject matter jurisdiction of OSP and the statewide grand jury. Subsection (3) is amended by:

- Adding “any other device capable of electronic data storage or transmission” to the list of devices that may not be used to seduce, solicit, lure, or entice a child to commit illegal acts related to sexual battery, lewdness or indecent exposure, or child abuse.
- Adding an offense of seducing, soliciting, luring, or enticing a child’s parent, legal guardian, or custodian to consent to the child’s participation in sexual acts.
- Expanding the list of illegal acts to include unlawful sexual conduct with a child or with another person believed by the person to be a child.
- Providing that misrepresenting age in violating the statute is an unranked 2nd degree felony. Violating the statute without such misrepresentation is a 3rd degree felony.
- Stating that each use of technology to violate the section can be charged as a separate offense.

New subsection (4) creates a felony offense of traveling to meet a minor for the purpose of committing a crime of sexual abuse of a child. The new offense is a 2nd degree felony with a Level 7 offense severity ranking. It applies to any person who travels, attempts to travel, or causes another person to travel or attempt to travel, any distance to engage in an illegal act described in ch. 794, F.S. (sexual battery), ch. 800, F.S., (lewdness or indecent exposure), or ch. 827, F.S., (child abuse). It also applies to any person who engages in other unlawful sexual conduct with a child, or a person believed by the offender to be a child, after using any of a broad range of electronic means to seduce, solicit, lure, or entice a child or a child’s parent, legal guardian, or custodian, or person believed to be a child or a child’s parent, legal guardian or custodian.

The addition of persons who are believed to be a child or a child’s parent, legal guardian or custodian as victims makes it clear that a crime is committed even if the perpetrator is actually communicating with an adult. This is often the case in investigations conducted by OSP’s Child Predator CyberCrime Unit and other law enforcement agencies, as well as efforts by organizations without law enforcement status.

This section also adds a provision stating that a person who violates s. 847.0135, F.S., can be charged with another offense that is violated by the same acts, even if the penalty is more severe.

**Section 7** of the bill amends s. 905.34, F.S., which states the jurisdiction of the statewide grand jury, parallel to amendments to the subject matter jurisdiction of the Office of Statewide Prosecution that are made in Section 1 of the bill. The sole difference is that the statewide grand jury’s jurisdiction is not expanded to include all crimes that are facilitated by or connected to use of the Internet.

**Section 8** significantly expands the application of s. 910.15, F.S., which currently deals with jurisdiction and venue of criminal trials relating to fraudulent practices and thefts. The section currently provides that a person charged with a fraudulent practice or a theft involving use of certain communications systems may be tried in the county where the dissemination originated,

where it was made, or in which any act necessary to consummate the offense occurred. Communications made by or made available through the Internet are considered to have been made in every Florida county. The amendment removes the limitation to only fraudulent practices and thefts, and makes the multi-jurisdiction provision (and statewide Internet provision) applicable to the trial of any crime facilitated by a communication using mail, telephone, newspaper, radio, television, Internet, or another means of electronic data communication.

**Section 9** of the bill amends s. 921.0022, F.S., the Criminal Punishment Code Offense Severity Ranking Chart. It ranks the new offense of “traveling to meet a minor to commit an unlawful sex act” created in section 6 of the bill as a Level 7 offense.

**Section 10** amends s. 943.0435, concerning sexual offenders, to require sexual offenders to register any electronic mail address and any instant message name with FDLE. It also requires FDLE to create a secure online method to register the information. Because registration is online, there is no need for the 48-hour grace period that is applicable to other registration information. The sexual offender is also required to keep the information up-to-date in the same manner as is required for a change of residence.

**Section 11** expresses legislative intent that the purpose of registering e-mail addresses and instant message names is to maximize public safety. The information is not intended to be used for harassing registered persons or networking among such persons for illegal purposes, and should not be readily available to minors.

**Section 12** creates a new s. 943.0437, F.S., authorizing FDLE to provide the e-mail addresses and instant message names of sexual offenders and sexual predators to social networking Internet sites, which will enable operators of the sites to screen for those users.

**Section 13** amends s. 944.606, F.S., to include a sexual offender’s e-mail addresses and instant message names in the personally-identifying information that must be provided by DOC upon the offender’s release from a correctional facility. The information must be provided within six months of release to law enforcement agencies in the county where the offender was sentenced and where he or she intends to reside, FDLE, victims or designated family members when requested, and any other person who requests the information. It should be noted that the term sexual offender as used in this statute includes sexual predators.

**Section 14** amends s. 944.607, F.S., amends s. 944.607, F.S., concerning registration and reporting requirements for sexual offenders under the supervision of DOC to require that e-mail addresses and instant message names be provided.

**Section 15** appropriates \$2,407,423 in recurring funds and \$847,929 in non-recurring funds from the General Revenue Fund, \$507,164 from the Grants and Donations Trust Fund, and authorizes 50 full-time-equivalent positions and associated rate to expand the resources of the Department of Legal Affairs for the investigation and prosecution of computer child pornography.

**Section 16** establishes an effective date of October 1, 2007 for all sections of the bill except for the appropriation, which has an effective date of July 1, 2007.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill includes appropriations of \$2,407,423 in recurring funds and \$847,929 in non-recurring funds from the General Revenue Fund, \$507,164 from the Grants and Donations Trust Fund, and authorizes 50 full-time-equivalent positions and associated rate to expand the resources of the Department of Legal Affairs for investigation and prosecution of criminal activity relating to child pornography, child exploitation and the victimization of children through the use of the Internet.

The Criminal Justice Impact Conference estimates that the bill would have an indeterminate prison bed impact. No information is available to indicate the frequency with which images of child pornography involve the elements which would lead to the reclassification of the offense.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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