SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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NOTE: This analysis reflects the nature of the bill as it left the Committee on Judiciary-Criminal. Any further changes to the bill are not included in this analysis. See the "Comments" section for the final procedural action taken by the Legislature.

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	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	C. Olwert	P.Liepshutz	1.	Judi-Crim.	FAV/CS
2.			2.		
3.			3.		

SUBJECT:

Child Abuse

BILL NO. AND SPONSOR:

CS/SB 182 by
Senator Crawford

I. SUMMARY:

A. Present Situation:

The United States and Florida Constitutions both guarantee freedom of speech. This protection does not extend to speech which is legally obscene.

In the area of child pornography, the U.S. Supreme Court has carved out an even broader exception to the protection normally given freedom of speech in New York v. Ferber, - U.S. - , 73 L.Ed.2d 1113, 102 S.Ct. 3348 (1982). Live performances or visual reproductions of children engaged in sexual conduct are not "protected speech." The material produced does not have to be proved legally obscene as an element of any of the involved offenses. The Court recognized that the advertising and selling of child pornography provides an economic motive for the production of the material and must be controlled in order to effectively combat this growing national problem. Therefore, the dissemination of the finished product as well as involvement in its production can be strictly punished.

There are several Florida statutes dealing with the problem of child pornography. It is a crime to hire the child for use in the production of child pornography, to produce the material or to distribute the final product. A parent or legal guardian who exploits a child or allows a child to be exploited in this manner is guilty of child abuse. Prosecution for crimes directly relating to the child's participation in the presentation, such as procuring the child or directing the production, requires only that the presentation depict sexual conduct. In order to punish the dissemination of the product, the material must be proved to be legally obscene.

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B. Effect of Proposed Changes:

This bill would criminalize, within Chapter 827 "Abuse of Children or Disabled or Aged Persons," involvement in child pornography from production through dissemination. To secure conviction the material would have to include sexual conduct by a child but would not have to be proved legally obscene. A person hiring or inducing a child to engage in a sexual performance, or a parent or legal guardian who consents to the child's participation, would be guilty of a second degree felony. A person producing, promoting or distributing a performance which includes sexual conduct by a child would be guilty of a second degree felony. A person possessing with the intent to promote any visual representation including sexual conduct by a child would be guilty of a second degree felony. Possession of three or more copies of such material would be prima facie evidence of such intent.

This bill would repeal or amend existing Florida Statutes so that the proposed legislation would be the only statute criminalizing the use of children in a sexual performance. This would not lessen the scope of behavior criminalized, but rather condenses all relevant crimes into one statute.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

The proposed legislation appears to be within the scope of the authority delineated in Ferber.

Final Update: CS/SB 182 passed both houses of the Legislature and was approved by the Governor on June 6, 1983. It was incorporated into the Laws of Florida as Chapter No. 83-75.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 182

Increases the range of behavior that is criminalized regarding persons involved in the creation or distribution of child pornography. Removes from the bill sections relating to obscenity standards. Repeals and amends sections of Florida Statutes overlapping with behavior criminalized in this bill.

Committee on Judiciary-Criminal

M. Paul Thompson
~~Chairman or~~ Staff Director

C14(4-74) (File 2 copies with Committee Substitutes)

Bill Analysis

FLORIDA HOUSE OF REPRESENTATIVES

H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore
Committee on Criminal Justice

Elvin L. Martinez
Chairman

Harold W. Spaet
Vice Chairman

CS/HB 148 by Committee on Criminal Justice and Rep. Carlton and Rep. Hanson relating to child abuse

DATE: April 14, 1983

REVISED: _____

OTHER COMMITTEES OF REFERENCE:
None

REVISED: _____

SENATE BILL: _____

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I. SUMMARY

A. PRESENT SITUATION:

Section 450.151 presently relates to the hiring and employing of a minor for certain sexual performances or in situations in which the life or health of a minor may be endangered. Any person who violates the provisions of this section is guilty of a felony of the second degree.

Section 827.07(2)(d)3. currently states than the sexual exploitation of a child by a parent or other person responsible for the child's welfare is considered child abuse pursuant to ss. 847.014 and 450.151.

B. EFFECT OF PROPOSED CHANGES:

Language in s. 450.151, which refers to the hiring and employing of a minor for certain sexual activities, is deleted. Reference to the exploitation of a child pursuant to ss. 847.014 and 450.151, is deleted in s. 827.07(2)(d)3.

Section 827.071 is created to define as child abuse the use of a child in a sexual performance as well as the promotion of a sexual performance by a child. Any person who employs, authorizes, or induces a child of less than 18 years of age to engage in sexual conduct in a sexual performance is guilty of a felony of the second degree. Any person promoting such a performance is also guilty of a felony of the second degree. Further, any person who possesses with the intent to promote

certain representations or presentations which include sexual conduct by a child is guilty of a felony of the second degree. Three or more copies of such representation or presentation is prima facie evidence of an intent to promote.

Section 847.014, which relates to the participation of minors in sexual performances, is repealed.

II. FISCAL IMPACT

None apparent

III. COMMENTS

The intent of this legislation is to facilitate the prosecution of persons who use or promote any sexual performance by a child, which is not necessarily obscene. A distinction is drawn between child abuse and pornography, with the focus on the child abuser. This legislation is directed at two types of people--those who use children in sexual performances and those who, being the parent or guardian or the child, "consent" to the child's participation in such activities. The elements of subsection (3) include any sexual performance by a child when there is sexual conduct by the child within that performance.

The United States Supreme Count, in its recent decision in New York v. Ferber, ___ U.S. ___, 73 L. Ed. 2d 1113, 102 S. Ct. ___ (1982), gave much greater latitude to the states to legislate in the area of child abuse. The language contained herein is patterned after the New York statute which was upheld as constitutional in the Ferber decision. In Ferber, the court held that:

(1) child pornography, like obscenity, is unprotected by the First Amendment if it involves scienter and a visual depiction of sexual conduct by children without serious literary, artistic, political, or scientific value;

(2) the New York statute sufficiently described a category of material the production and distribution of which was not entitled to First Amendment protection; and

(3) the statute was not overbroad as forbidding the distribution of material with serious literary, scientific or educational value, or material not threatening the harms sought to be combated by the state.

Section 847.014 is repealed and section 450.151 amended in light of the creation of s. 827.071.

IV. AMENDMENTS

Prepared by: Marie Mattox-Shelfer

Staff Director: Thomas R. Tedcastle

Copy to Sponsor: April 14, 1983

BILL ACTION REPORT

(C3-75: File with Secretary of Senate) (S)XXXXBILL NO. 182

COMMITTEE ON Judiciary-Criminal

DA April 12, 1983 Date Reported 4-13-83

TIME 2:00 - 5:00 P.M.

PLACE Room "C" S.O.B.

OTHER COMMITTEE REFERENCES:
(In order shown)

FINAL ACTION:

____ Favorably with ____ amendments

X Favorably with Committee Substitute

____ Unfavorably

OTHER: ____ Temporarily Passed

____ Reconsidered

____ Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	Proposed CS (moved to adopt)		Amend. #1 to Proposed CS		Title Amend. to Proposed CS					
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Beard	WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION					
X		Crawford										
		Langley										
X		Malchon										
X		Plummer										
X		Weinstein										
		Carlucci										
5	0	TOTAL										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( )