STORAGE NAME: 85-1054 HB

Date: April 21, 1985
Subcommittee: I
Revised:
Final:

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HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
STAFF ANALYSIS

BILL# HB 1054 SPONSOR Reps. Hargrett & Martinez

EFFECTIVE DATE October 1, 1985 IDENTICAL/SIMILAR BILLS SB 436

RELATING TO Child pornography

OTHER COMMITTEES OF REFERENCE None

I. SUMMARY:

Present Situation:

Section 827.071, F.S., generally prohibits the sexual exploitation of a minor in any play, movie, photograph, dance or "any other visual representation exhibited before an audience"; penalties are second degree felonies (15 years).

Specifically, subsection (2) prohibits the using of a minor in a sexual performance by employing, authorizing or inducing a minor to participate. Subsection (3) prohibits the producing, directing or promotion of a sexual performance by a minor. Finally, subsection (4) prohibits the possession, with the intent to promote, of any photograph, movie, exhibition, show or representation in which a minor engages in a "sexual performance." Prima facie evidence of intent to promote is established by possession of 3 or more copies of the recorded performance (movie, photograph, etc.).

Effect of Proposed Changes:

The bill would eliminate the intent to promote element in subsection (4) as it relates to possession of a recorded sexual performance by a minor. The simple possession of any photo, movie, exhibition, show or representation in which a minor is engaged in sexual conduct (defined as: "actual or simulated sexual intercourse, deviate sexual intercourse, sexual beastiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.") would constitute a second degree felony.

II. ECONOMIC IMPACT:

COMMITTEE INFORMATION RECORD

House of Representatives

Committee on Criminal Justice

Bill No. 1054

Date of meeting May 7, 1985

Time 1:15 P.M.

Place 314 HOB

FINAL ACTION:
____ FAVORABLE
__X__ FAVORABLE WITH __1__ AMENDMENTS
____ FAVORABLE WITH SUBSTITUTE
____ UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
	Brantley	
X	Burke	
X	Casas	
X	Clements	
X	Deutsch	
X	Grant	
	Kutun	
X	Locke	
X	Mackenzie	
X	McEwan	
X	Renke	
X	Ros	
X	Sample	
X	Thomas, J.	
	Wetherell	

YEA	MEMBER	NAY
X	Martinez, Chm.	

Total Yeas 13

Total Nays 0

Elvira L. Martinez
Chairman

COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here__)

File 2 copies with Clerk

H-22(197

To _____

Notice of

COMMITTEE MEETING

House of Representatives

April 19, 1985

Crimes & Penalties subcommittee of
(strike if not applicable)

the Committee on Criminal Justice

will meet in Committee Room 314 HOB, at 3:30-5:00 p.m.

on April 23, 1985 (date) to consider :

HB 158 - Crotty - fighting or baiting animals
HB 306 - Gordon - expunction/criminal histories
HB 832 - Figg & Gordon - sexual battery/separate acts
HB 1036 - Figg, Gordon, Mackenzie & others - domestic violence injunction
HB 779 - Figg - security of communications: contempt
HB 797 - Rochlin - animal control: pit bulls
HB 941 - Gallagher - duty to give information
HB 97 - Woodruff, Evans-Jones & Grindle - sexual battery/victims
HB 967 - McEwan - restitution
HB 1054 - Hargrett - child pornography
HB 1093 - Carlton, Morgan, Shackelford & others - indecent material/cable T.V.
HB 609 - Gardner - imitation controlled substances

Did not take up this bill -

To _____

Notice of

COMMITTEE MEETING

House of Representatives

May 3, 1985

_____ subcommittee of
(strike if not applicable)

the Committee on Criminal Justice

will meet in Committee Room 314 HOB, at 1:15 - 5:00 p.m.

on May 7, 1985 to consider :
(date)

HB 1054 - Hargrett - child pornography

SB 385 - Gordon - cable TV: privacy of subscribers

HB 739 - Friedman - cable TV: privacy of subscribers

HB 609 - Gardner - imitation controlled substances

HB 745 - Shelley - contraband forfeiture: trust funds

PCB-CJ - 9 - criminal forfeiture

HB 967 - McEwan - restitution

Proposed Committee Substitute for HB 481

(HB 481 contains provisions from DUI bills referred to the Committee)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	E. Davis	Liepshutz	1.	JCR	
2.			2.		
3.			3.		

SUBJECT: Child Pornography

BILL NO. AND SPONSOR: SB 436 by Senator Frank

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I. SUMMARY:

A. Present Situation:

For purposes of Florida law, child pornography is any photograph, motion picture, exhibition, show, representation, or other presentation of sexual conduct by a child. Under the current law it is not illegal for someone to merely possess one or two pieces of child pronography without an intent to promote it. It is illegal for someone to possess child pornography with the intent to promote it.

Section 827.071 defines the word "promote" as an activity or transaction involving more than one person. It means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same. If the state prosecutes someone who possesses three or more copies of any of the above depictions of sexual conduct by a child, it is guaranteed by statute to have a prima facie case of an intent to promote. The prima facie case would withstand a motion by the defendant for a directed verdict or a motion to dismiss, and guarantee that the state's case would be sent to the jury.

B. Effect of Proposed Changes:

This legislation would make the mere possession of child pornography illegal. The state would no longer be required to prove an intent to promote. Under the current statute, possession of three or more copies of the same depiction infers an intent to promote. Arguably, if the photographs were not identical, that is, copies, of the same depiction, then the state could not infer an intent to promote. As such, a person who had five pictures of the same child in various stages of one sexual act would not necessarily have an intent to promote because the photos were not copies.

Such problems as these would be resolved by making the possession of one single depiction illegal. The penalty for possessing a depiction of a sexual performance by a child would remain a second degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The Department of Corrections has determined that SB 436 will produce little or no impact on the Department.

III. COMMENTS:

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

The Supreme Court has determined that material is obscene if, taken as a whole, it appeals to the prurient interest in sex, portrays sexual conduct in a patently offensive way, and does not have any serious literary, artistic, political, or scientific value. Miller v. California, 413 U.S. 15, 93 s.Ct.2607, 37 L.Ed.2d 419 (1973). The Court has stated that for material involving children to be deemed pornographic, it does not have to meet the obscenity standard announced in Miller. New York v. Ferber, 102 S.Ct. 3348 (1982). The Court also held that states are entitled to greater leeway in regulating pornographic depictions of children.

In light of Ferber, three states, Arizona, Ohio, and Washington, have amended their laws to illegalize the possession of child pornography.

The Supreme Court has stated that, as with obscenity laws, criminal responsibility may not be imposed under child pornography laws without some element of scienter on the part of the defendant. The statute should be amended to provide the element of knowledge on the part of the defendant.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	E. Davis EMD	Liepshutz WMP	1.	JCR	Fav/1 amend.
2.			2.		
3.			3.		

SUBJECT:

Child Pornography

BILL NO. AND SPONSOR:

SB 436 by
Senator Frank

I. SUMMARY:

A. Present Situation:

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Section 827.071 defines the word "promote" as an activity or transaction involving more than one person. It means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same. If the state prosecutes someone who possesses three or more copies of any of the above depictions of sexual conduct by a child, it is guaranteed by statute to have a prima facie case of an intent to promote. The prima facie case would withstand a motion by the defendant for a directed verdict or a motion to dismiss, and guarantee that the state's case would be sent to the jury.

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In light of Ferber, three states, Arizona, Ohio, and Washington, have amended their laws to illegalize the possession of child pornography.

The Supreme Court has stated that, as with obscenity laws, criminal responsibility may not be imposed under child pornography laws without some element of scienter on the part of the defendant. The statute should be amended to provide the element of knowledge on the part of the defendant.

IV. AMENDMENTS:

Amendment #1 by Judiciary-Criminal Committee:
The word "knowingly" is inserted thereby making it illegal for someone to knowingly possess a visual depiction or representation of sexual conduct by a child.

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.	E. Davis	Liepshutz	1.	JCR	Fav/1 amend.
2.			2.		
3.			3.		

SUBJECT:

Child Pornography

BILL NO. AND SPONSOR:

SB 436 by
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The Supreme Court has stated that, as with obscenity laws, criminal responsibility may not be imposed under child pornography laws without some element of scienter on the part of the defendant. The statute should be amended to provide the element of knowledge on the part of the defendant.

Final Update: HB 1054, which was substituted for SB 436 on the Senate Calendar, passed both Houses of the Legislature, was approved by the Governor on June 19, 1985, and was incorporated into the Laws of Florida as Chapter 85-273.

IV. AMENDMENTS:

Amendment #1 by Judiciary-Criminal Committee:
The word "knowingly" is inserted thereby making it illegal for someone to knowingly possess a visual depiction or representation of sexual conduct by a child.

BILL ACTION REPORT

(C3-75: File with Secretary of Senate) (S)(H) BILL NO. SB 436

COMMITTEE ON Judiciary-Criminal

DATE April 29, 1985 Date Reported April 29, 1985

TIME 2:00 - 5:00

PLACE Room "C" S.O.B.

OTHER COMMITTEE REFERENCES:
(In order shown)

None.

FINAL ACTION:

X Favorably with 1 amendments

____ Favorably with Committee Substitute

____ Unfavorably

OTHER: ____ Temporarily Passed

____ Reconsidered

____ Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	Amend. #1									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Beard	WITHOUT OBJECTION									
X		D. Childers										
X		Crawford										
		Gersten										
X		Kiser										
X		Plummer										
X		Thurman										
X		Weinstein										
7	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 ( )