STORAGE NAME: s0152z.cj **AS PASSED BY THE LEGISLATURE**
DATE: May 15, 1991 CHAPTER #: 91-33, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: SB 152

RELATING TO: Sexual Offenses Involving Children

SPONSOR(S): Senator Wexler

STATUTE(S) AFFECTED: s. 827.071, F.S.

COMPANION BILL(S): HB 1791 (i)

COMMITTEES OF REFERENCE: HB 1791
(1) CRIMINAL JUSTICE YEA 14 NAY 0
(2)
(3)
(4)
(5)

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I. SUMMARY:

Chapter 827, F.S., relating to the abuse of children, addresses offenses which include child abuse and sexual performances by children. Recently, the Fifth District Court of Appeal held a portion of the definition of "sexual conduct" unconstitutional because they found the language substantially overbroad. In response to the court's opinion in Tirohn, this bill amends the definition of sexual conduct, as it relates to physical contact with certain clothed or unclothed body parts, to require that such contact be committed with the intent to arouse or gratify the sexual desire of either party.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 827.071, F.S., defines and provides penalties for offenses involving the sexual performance of a child. A child is defined as any person under the age of 18 years. "Sexual conduct" is defined as:

1) Actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse;

2) Actual lewd exhibition of the genitals;

3) Actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast; or

4) Any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

Section 827.071(5), F.S., provides that it is a third degree felony to knowingly possess any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.

Recently, in State v. Tirohn, 556 So.2d 447 (5th DCA 1990), the Fifth District Court of Appeal held a portion of the definition of "sexual conduct" unconstitutional because it is substantially overbroad. Specifically, the language relating to actual physical contact with certain clothed or unclothed body parts was found unconstitutional by the court. The Court gave examples of conduct which would be prohibited by a literal reading of this section, which include a "picture of a father bathing his son" and a "photograph of a junior high school coach giving a congratulatory smack of the hand to the buttocks of one of his players fully dressed in football uniform."

B. EFFECT OF PROPOSED CHANGES:

In response to the court's opinion in Tirohn, this bill amends the definition of "sexual conduct" found in s. 827.071(1)(g), F.S., as it relates to physical contact with certain clothed or unclothed body parts, to require that such contact be committed with the intent to arouse or gratify the sexual desire of either party.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 827.071(1)(g), F.S., the definition of "sexual conduct", as described above.

Sections 2 through 15 reenact various subdivisions of the Florida Statutes, 1990 Supplement, to incorporate the amendment to s.

827.071, F.S. Specifically, ss. 39.001(3)(b) and (d), 39.076(3)(w) and (5)(a), 110.1127(3)(a) and (b), 242.335(3)(a) and (b), 393.0655(1)(u) and (3)(a), 394.457(6)(a) and (c), 396.0425(1)(u) and (3)(a), 397.0715(1)(u) and (3)(a), 402.305(1)(a) and (c), 409.175(4)(a), 772.102(1)(a), 895.02(1)(a), 934.07, and 943.058(9), F.S., 1990 Supplement, relating to the screening of personnel, definitions of the terms "criminal activity" and "racketeering activity", the interception of certain communication, and the expunction of criminal records, are reenacted to incorporate the amendment to s. 827.071, F.S., in cross references.

Section 16 provides an effective date of October 1, 1991.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None anticipated

2. Recurring Effects:

   None anticipated

3. Long Run Effects Other Than Normal Growth:

   None anticipated

4. Total Revenues and Expenditures:

   None anticipated

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None

2. Recurring Effects:

   None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated

2. Direct Private Sector Benefits:

None anticipated

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Exempt as a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable

V. COMMENTS:

The Office of the Attorney General supports this bill.

HB 1791 was laid on the table and the identical Senate companion passed the House on April 18, 1991 (YEA 114, NAY 0).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:	Staff Director:
Kristin S. Pingree	Susan G. Bisbee

FINAL ANALYSIS PREPARED BY COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:	Staff Director:
Kristin S. Pingree	Susan G. Bisbee

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Liepshutz	CJ	Favorable
2.				
3.				
4.				

SUBJECT: Sexual Offenses Involving Children

BILL NO. AND SPONSOR: SB 152 by Senator Wexler

I. SUMMARY:

A. Present Situation:

Currently, crimes involving the promotion of or the use of children under 18 years of age in a sexual performance are classified under s. 827.071, F.S., as second degree felony offenses. Another second degree felony offense under the section is possession with intent to promote a picture or other representation which includes any sexual conduct by a child. Knowingly possessing a picture or other representation which includes any sexual conduct by a child is also punishable as a third degree felony.

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Sexual performance is a performance which includes any sexual conduct by a child under 18 years of age. Sexual conduct is defined as "actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse, actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed." Since the definition covers physical contact with certain body parts, under a literal reading of the statute, a man who possesses a picture of his wife nursing their child could be guilty of a third degree felony. This example is similar to the ones cited by the Fifth District Court of Appeal when it held that portion of the definition unconstitutionally overbroad. State v. Tirohn, 556 So.2d 447 (5th DCA 1990).

B. Effect of Proposed Changes:

The definition of sexual conduct relating to physical contact with certain clothed or unclothed body parts would be amended to require an intent to arouse or gratify the sexual desire of either party. Thus, under a literal reading of the statute, possession of a picture depicting a mother nursing her child could no longer be classified as a felony offense without the additional requisite intent.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

None.

BILL VOTE SHEET

(VS-90: File with Secretary of Senate) BILL NO. SB 152

COMMITTEE ON: Criminal Justice

DATE: February 19, 1991

TIME: 02:00 PM -- 04:00 PM

PLACE: Room 2-C

OTHER COMMITTEE REFERENCES:
(in order shown)

None

ACTION:

X Favorably with _____ amendments

___ Favorably with Committee Substitute

___ Unfavorably

___ Submitted as a Committee Bill

___ Temporarily Passed

___ Reconsidered

___ Not Considered

___ No Quorum

THE VOTE WAS:

FINAL BILL VOTE		SENATORS											
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Beard										
X		Casas										
X		Davis										
X		Langley										
X		Plummer										
		MAJORITY LEADER Weinstein										
X		VICE-CHAIRMAN Yancey										
X		CHAIRMAN Grant										
7	0	TOTAL										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

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

STORAGE NAME: h1791.cj
DATE: March 18, 1991

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1791

RELATING TO: Sexual Offenses Involving Children

SPONSOR(S): Representative Hafner

STATUTE(S) AFFECTED: s. 827.071, F.S.

COMPANION BILL(S): SB 152 (i)

COMMITTEES OF REFERENCE:
(1) CRIMINAL JUSTICE
(2)
(3)
(4)
(5)

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I. SUMMARY:

Chapter 827, F.S., relating to the abuse of children, addresses offenses which include child abuse and sexual performances by children. Recently, the Fifth District Court of Appeal held a portion of the definition of "sexual conduct" unconstitutional because they found the language substantially overbroad. The Court gave examples of conduct which would be prohibited by a literal reading of this definition, which include a "picture of a father bathing his son" and a "photograph of a junior high school coach giving a congratulatory smack of the hand to the buttocks of one of his players fully dressed in football uniform." In response to the court's opinion in Tirohn, this bill amends the definition of sexual conduct, as it relates to physical contact with certain clothed or unclothed body parts, to require that such contact be committed with the intent to arouse or gratify the sexual desire of either party.

The bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 827.071, F.S., defines and provides penalties for offenses involving the sexual performance of a child. A child is defined as any person under the age of 18 years. "Sexual conduct" is defined as:

1) Actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse;

2) Actual lewd exhibition of the genitals;

3) Actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast; or

4) Any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

Section 827.071(5), F.S., provides that it is a third degree felony to knowingly possess any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.

Recently, in State v. Tirohn, 556 So.2d 447 (5th DCA 1990), the Fifth District Court of Appeal held a portion of the definition of "sexual conduct" unconstitutional because it is substantially overbroad. Specifically, the language relating to actual physical contact with certain clothed or unclothed body parts was found unconstitutional by the court. The Court gave examples of conduct which would be prohibited by a literal reading of this section, which include a "picture of a father bathing his son" and a "photograph of a junior high school coach giving a congratulatory smack of the hand to the buttocks of one of his players fully dressed in football uniform."

B. EFFECT OF PROPOSED CHANGES:

In response to the court's opinion in Tirohn, this bill amends the definition of "sexual conduct" found in s. 827.071(1)(g), F.S., as it relates to physical contact with certain clothed or unclothed body parts, to require that such contact be committed with the intent to arouse or gratify the sexual desire of either party.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 827.071(1)(g), F.S., the definition of "sexual conduct", as described above.

Sections 2 through 15 reenact various subdivisions of the Florida Statutes, 1990 Supplement, to incorporate the amendment to s.

827.071, F.S. Specifically, ss. 39.001(3)(b) and (d), 39.076(3)(w) and (5)(a), 110.1127(3)(a) and (b), 242.335(3)(a) and (b), 393.0655(1)(u) and (3)(a), 394.457(6)(a) and (c), 396.0425(1)(u) and (3)(a), 397.0715(1)(u) and (3)(a), 402.305(1)(a) and (c), 409.175(4)(a), 772.102(1)(a), 895.02(1)(a), 934.07, and 943.058(9), F.S., 1990 Supplement, relating to the screening of personnel, definitions of the terms "criminal activity" and "racketeering activity", the interception of certain communication, and the expunction of criminal records, are reenacted to incorporate the amendment to s. 827.071, F.S., in cross references.

Section 16 provides an effective date of October 1, 1991.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None anticipated.

2. Recurring Effects:

   None anticipated.

3. Long Run Effects Other Than Normal Growth:

   None anticipated.

4. Total Revenues and Expenditures:

   None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

None anticipated.

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Exempt as a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

The Office of the Attorney General supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:

Kristin S. Pingree

Staff Director:

Susan G. Bisbee

STORAGE NAME: h1791a.cj
DATE: March 25, 1991

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIMINAL JUSTICE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1791

RELATING TO: Sexual Offenses Involving Children

SPONSOR(S): Representative Hafner

STATUTE(S) AFFECTED: s. 827.071, F.S.

COMPANION BILL(S): SB 152 (i)

COMMITTEES OF REFERENCE:
(1) CRIMINAL JUSTICE YEA 14 NAY 0
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3) Actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast; or

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B. EFFECT OF PROPOSED CHANGES:

In response to the court's opinion in Tirohn, this bill amends the definition of "sexual conduct" found in s. 827.071(1)(g), F.S., as it relates to physical contact with certain clothed or unclothed body parts, to require that such contact be committed with the intent to arouse or gratify the sexual desire of either party.

C. SECTION-BY-SECTION ANALYSIS:

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Section 16 provides an effective date of October 1, 1991.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None anticipated.

2. Recurring Effects:

None anticipated.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

4. Total Revenues and Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

None anticipated.

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Exempt as a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

The Office of the Attorney General supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIMINAL JUSTICE:

Prepared by:

Kristin S. Pingree

Staff Director:

Susan G. Bisbee