STORAGE NAME: s380z.jud
DATE: April 28, 1992

AS PASSED BY THE LEGISLATURE
CHAPTER #: 92-83, Laws of Florida

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

BILL #: SB 380

RELATING TO: Offenses involving obscene materials

SPONSOR(S): Senator Gardner and others

STATUTE(S) AFFECTED: Section 827.071, Florida Statutes

COMPANION BILL(S): Identical HB 373

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIMINAL JUSTICE
(2) APPROPRIATIONS
(3)
(4)
(5)

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I. SUMMARY:

SB 380 provides that possession of each photograph, motion picture, exhibition, show, representation, or presentation, in whole or in part, which a person knows to include any sexual conduct by a child is a separate offense for the purpose of the prohibition against child pornography.

This bill should not have a substantial fiscal impact upon state or local government.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The knowing possession of any picture or other representation containing sexual conduct by a child is a third degree felony under section 827.071, Florida Statutes. Recently, the Forth District Court of Appeal held that possession of several such items constitutes only one offense. Schmitt v. State, 563 So.2d 1095 (4th DCA 1990, approved in part and quashed in part, 16 F.L.W. 731 (Fla. November 14, 1991). The court in Schmitt stated that "by the use of the word 'any,' the legislature intended that possession of several articles should be treated as a single offense with multiple convictions and punishments precluded." Id at 1101.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that possession of each photograph, motion picture, exhibition, show, representation, or presentation, in whole or in part, which a person knows to include any sexual conduct by a child is a separate offense for the purpose of the prohibition against child pornography.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 - Amends s. 827.071, F.S. to provide that the possession of each photograph, motion picture, exhibition, show, representation, or presentation, in whole or in part, which a person knows to include any sexual conduct by a child is a separate offense.

Section 2 - Provides an effective date of October 1, 1992 and prospective application.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Florida Department of Corrections states that while no empirical data is available, admissions to the department for violation of child pornography statutes is very low and the impact on the total offender population minimal.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The provisions of Article VII, s. 18, Florida Constitution, are not applicable to this bill.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not affect the ability of local government to raise revenues.

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

None.

V. COMMENTS:

SB 380 addresses the issue raised in Schmitt by specifically providing that each item of child pornography constitutes a separate offense.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:
Prepared by: David J. Evans

Staff Director: Richard Hixson

FINAL ANALYSIS PREPARED BY COMMITTEE ON JUDICIARY:
Prepared by: B. Elaine New

Staff Director: Richard Hixson

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

SUBJECT: Offenses Involving Obscene Materials

BILL NO. AND SPONSOR: SB 380 by Senator Gardner

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 this section is possession with intent to promote any picture or other representation which includes any sexual conduct by a child. Knowingly possessing any picture or other representation which includes any sexual conduct by a child is also punishable under this statute as a third degree felony.

The Fourth District Court of Appeal held that it was error to find a defendant guilty under s. 827.071(5), F.S., of seven counts of possessing photographs depicting sexual conduct by a child. Schmitt v. State, 563 So.2d 1095 (4th DCA 1990), approved in part and quashed in part, 16 F.L.W. 731 (Fla. November 14, 1991). The district court concluded that the Legislature, by using the word "any" to modify "picture," meant that possession of several pornographic articles or pictures should be treated as a single crime with one punishment rather than as multiple crimes with multiple punishments. 563 So.2d at 1101.

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B. Effect of Proposed Changes:

The bill would address the Schmitt case by amending the language the district court construed as precluding multiple punishments and by specifying that possession of each picture or representation would be punishable as a separate offense. Thus, in contrast to the Schmitt holding, a court would be able to convict and punish a defendant for seven separate possession offenses when he was found guilty of possessing seven pictures depicting sexual conduct by a child.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, any fiscal impact caused by the SB 380 would be minimal.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

SUBJECT:

Offenses Involving Obscene Materials

BILL NO. AND SPONSOR:

SB 380 by Senator Gardner

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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 this section is possession with intent to promote any picture or other representation which includes any sexual conduct by a child. Knowingly possessing any picture or other representation which includes any sexual conduct by a child is also punishable under this statute as a third degree felony.

The Fourth District Court of Appeal held that it was error to find a defendant guilty under s. 827.071(5), F.S., of seven counts of possessing photographs depicting sexual conduct by a child. Schmitt v. State, 563 So.2d 1095 (4th DCA 1990), approved in part and quashed in part, 16 F.L.W. 731 (Fla. November 14, 1991). The district court concluded that the Legislature, by using the word "any" to modify "picture," meant that possession of several pornographic articles or pictures should be treated as a single crime with one punishment rather than as multiple crimes with multiple punishments. 563 So.2d at 1101.

B. Effect of Proposed Changes:

The bill would address the Schmitt case by amending the language the district court construed as precluding multiple punishments and by specifying that possession of each picture or representation would be punishable as a separate offense. Thus, in contrast to the Schmitt holding, a court would be able to convict and punish a defendant for seven separate possession offenses when he was found guilty of possessing seven pictures depicting sexual conduct by a child.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, any fiscal impact caused by the SB 380 would be minimal.

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 380

COMMITTEE ON: Criminal Justice

DATE: January 14, 1992

TIME: 02:00 PM -- 05:00 PM

PLACE: Room 2C

OTHER COMMITTEE REFERENCES:
(in order shown)

AP

ACTION:

X Favorably with _____ amendments

___ Favorably with Committee Substitute

___ Unfavorably

___ Submitted as a Committee Bill

___ Temporarily Passed

___ Reconsidered

___ Not Considered

___ No Quorum

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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		Grant										
X		Langley										
		MAJORITY LEADER Weinstein										
X		VICE-CHAIRMAN Yancey										
X		CHAIRMAN Plummer										
6	1	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: h0373.jud
DATE: January 31, 1992

absolute

HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 373

RELATING TO: Offenses involving obscene materials

SPONSOR(S): Rep. Ritchie

STATUTE(S) AFFECTED: Section 827.071, Florida Statutes

COMPANION BILL(S): Identical SB 380

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) JUDICIARY
(2) APPROPRIATIONS
(3)
(4)
(5)

****

I. SUMMARY:

HB 373 provides that possession of each photograph, motion picture, exhibition, show, representation, or presentation, in whole or in part, which a person knows to include any sexual conduct by a child is a separate offense for the purpose of the prohibition against child pornography.

This bill should not have a substantial fiscal impact upon state or local government.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The knowing possession of any picture or other representation containing sexual conduct by a child is a third degree felony under section 827.071, Florida Statutes. Recently, the Forth District Court of Appeal held that possession of several such items constitutes only one offense. Schmitt v. State, 563 So.2d 1095 (4th DCA 1990, approved in part and quashed in part, 16 F.L.W. 731 (Fla. November 14, 1991). The court in Schmitt stated that "by the use of the word 'any,' the legislature intended that possession of several articles should be treated as a single offense with multiple convictions and punishments precluded." Id at 1101.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that possession of each photograph, motion picture, exhibition, show, representation, or presentation, in whole or in part, which a person knows to include any sexual conduct by a child is a separate offense for the purpose of the prohibition against child pornography.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 - Amends s. 827.071, F.S. to provide that the possession of each photograph, motion picture, exhibition, show, representation, or presentation, in whole or in part, which a person knows to include any sexual conduct by a child is a separate offense.

Section 2 - Provides an effective date of October 1, 1992 and prospective application.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The provisions of Article VII, s. 18, Florida Constitution, are not applicable to this bill.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not affect the ability of local government to raise revenues.

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

None.

V. COMMENTS:

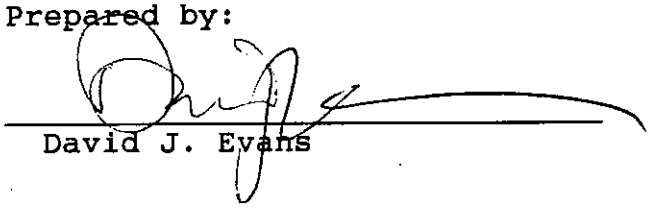
HB 373 addresses the issue raised in Schmitt by specifically providing that each item of child pornography constitutes a separate offense.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by: Staff Director:



David J. Evans Richard Hixson

STORAGE NAME: h0373.jud
DATE: January 31, 1992

HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 373

RELATING TO: Offenses involving obscene materials

SPONSOR(S): Rep. Ritchie

STATUTE(S) AFFECTED: Section 827.071, Florida Statutes

COMPANION BILL(S): Identical SB 380

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) JUDICIARY
(2) APPROPRIATIONS
(3)
(4)
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Section 2 - Provides an effective date of October 1, 1992 and prospective application.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

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This bill does not affect the ability of local government to raise revenues.

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

None.

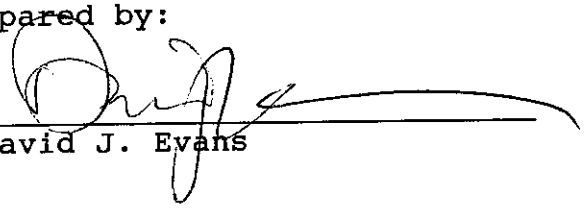
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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:
Prepared by:



David J. Evans

Staff Director:

Richard Hixson

STORAGE NAME: h0373.jud
DATE: February 14, 1992

AS REPORTED TO CLERK

HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 373

RELATING TO: Offenses involving obscene materials

SPONSOR(S): Rep. Ritchie

STATUTE(S) AFFECTED: Section 827.071, Florida Statutes

COMPANION BILL(S): Identical SB 380

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) JUDICIARY 16 YEAS 0 NAYS
(2) APPROPRIATIONS
(3)
(4)
(5)

****

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3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

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

None.

V. COMMENTS:

HB 373 addresses the issue raised in Schmitt by specifically providing that each item of child pornography constitutes a separate offense.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:
Prepared by:

David J. Evans

Staff Director:

Richard Hixson

AS REPORTED TO CLERK

House of Representatives

COMMITTEE INFORMATION RECORD

Committee on JUDICIARY
Date of Meeting 2/3/92
Time 10:00 a.m.
Place 413 C

Bill No.: HB 373

FINAL ACTION:
X Favorable
_____ Favorable with _____ Amendments
_____ Favorable with Substitute
_____ Unfavorable

VOTE:

YEA	MEMBER	NAY
	Arnold	
X	Boyd	
X	Burke	
X	Cosgrove	
	De Grandy	
X	Graber	
X	Graham	
X	Hoffmann	
X	Jones, Daryl	
	Laurent	
X	Mitchell	
X	Press	
X	Ritchie	
	Rojas	
X	Rush	
X	Sanderson	
X	Silver	
X	Smith, C. R.	
X	Tobiassen	
	Webster	
X	Trammell, Chr.	

YEA	MEMBER	NAY

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Total Yeas 16
Total Nays 0

IF PRESENT, MEMBER WOULD HAVE VOTED:

Robert D. Trammell
Chairman

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 the Chairman.

(FILE WITH THE CLERK AND ATTACH SUBCOMMITTEE REPORT IF APPLICABLE)