

Florida
Title XLVI, Chapter 847

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[Title XLVI](#)
CRIMES

[Chapter 847](#)
OBSCENITY

847.001 Definitions.--As used in this chapter, the term:

- (1) "Adult" means a person 18 years of age or older.
- (2) "Adult entertainment establishment" means the following terms as defined:
 - (a) "Adult bookstore" means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.
 - (b) "Adult theater" means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.
 - (c) "Special Cabaret" means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.
 - (d) "Unlicensed massage establishment" means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term "unlicensed massage establishment" does not include an establishment licensed under s. [480.43](#) which routinely provides

medical services by state-licensed health care practitioners and massage therapists licensed under s. [480.041](#).

(3) "Child pornography" means any image depicting a minor engaged in sexual conduct.

(4) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device. The term also includes: any on-line service, Internet service, or local bulletin board; any electronic storage device, including a floppy disk or other magnetic storage device; or any compact disc that has read-only memory and the capacity to store audio, video, or written materials.

(5) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(6) "Harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

(7) "Masochism" means sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death.

(8) "Minor" means any person under the age of 18 years.

(9) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.

(10) "Obscene" means the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

A mother's breastfeeding of her baby is not under any circumstance "obscene."

(11) "Person" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(12) "Sadism" means sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death upon another person or an animal.

(13) "Sodomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

(14) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(15) "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(16) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sodomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(17) "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

(18) "Sexually oriented material" means any book, article, magazine, publication, or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits

human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(19) "Simulated" means the explicit depiction of conduct described in subsection (16) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(20) "Specific sexual activities" includes the following sexual activities and the exhibition of the following anatomical areas:

(a) Human genitals in the state of sexual stimulation or arousal.

(b) Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio, or any excretory function, or representation thereof.

(c) The fondling or erotic touching of human genitals, the pubic region, the buttocks, or the female breasts.

(d) Less than completely and opaquely covered:

1. Human genitals or the pubic region.

2. Buttocks.

3. Female breasts below the top of the areola.

4. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

History.--s. 1, ch. 86-238; s. 4, ch. 88-283; s. 6, ch. 93-4; s. 70, ch. 96-388; s. 2, ch. 2001-54; s. 1, ch. 2001-177.

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.--

(1)(a) Any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to

state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(b) The knowing possession by any person of three or more identical or similar materials, matters, articles, or things coming within the provisions of paragraph (a) is prima facie evidence of the violation of said paragraph.

(2) A person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, is guilty of a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#). A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(4) Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(5) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(6) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or conduct engaged in the defendant had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, by showing facts and circumstances from which it may fairly be inferred that he or she had such knowledge, or by showing that he or she had knowledge of such facts and circumstances as would put a person of ordinary intelligence and caution on inquiry as to such contents or character.

(7) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section; and, upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer, the same shall be held by the arresting agency. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and, after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if the claimant shows that he or she is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(8)(a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney or attorney for a municipality in the name of the state upon the relation of such state attorney or attorney for a municipality.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney or attorney for a municipality requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made; however, such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In any action brought as provided in this subsection, no bond or undertaking shall be required of the state attorney or the municipality or its attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the state attorney or the municipality or its attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this subsection, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section shall not apply to the exhibition of motion picture films permitted by s. [847.013](#).

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 61-7; s. 1053, ch. 71-136; ss. 1A, 2A, 3A, 4, 5A, 6, ch. 71-337; s. 171, ch. 71-355; s. 34, ch. 73-334; s. 2, ch. 86-238; s. 68, ch. 88-381; s. 1, ch. 89-44; s. 211, ch. 91-224; s. 1348, ch. 97-102.

847.012 Prohibition of sale or other distribution of harmful materials to persons under 18 years of age; penalty.--

(1) As used in this section, "knowingly" means having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(a) The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

(b) The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(2) It is unlawful for any person knowingly to sell, rent, or loan for monetary consideration to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors, or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. [847.001](#), explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

(3) Any person violating any provision of this section is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(4) Every act, thing, or transaction forbidden by this section constitutes a separate offense and is punishable as such.

(5)(a) The circuit court has jurisdiction to enjoin a violation of this section upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of her or his compliance.

(e) In any action brought as provided in this section, no bond or undertaking shall be required of the state or the state attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the state attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon her or him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

(6) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(7) This section does not apply to the exhibition of motion pictures, shows, presentations, or other representations regulated under the provisions of s. [847.013](#).

History.--ss. 1, 2, 3, 4, 5, 6, 7, ch. 67-153; ss. 1, 2, ch. 69-41; s. 1054, ch. 71-136; s. 171, ch. 71-355; s. 34, ch. 73-334; s. 1, ch. 83-77; s. 2, ch. 86-38; s. 3, ch. 86-238; s. 5, ch. 88-283; s. 1349, ch. 97-102.

847.0135 Computer pornography; penalties.--

(1) SHORT TITLE.--This section shall be known and may be cited as the "Computer Pornography and Child Exploitation Prevention Act of 1986."

(2) COMPUTER PORNOGRAPHY.--A person who:

- (a) Knowingly compiles, enters into, or transmits by use of computer;
- (b) Makes, prints, publishes, or reproduces by other computerized means;
- (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or
- (d) Buys, sells, receives, exchanges, or disseminates,

any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(3) CERTAIN USES OF COMPUTER SERVICES PROHIBITED.--Any person who knowingly utilizes a computer on-line service, Internet service, or local bulletin board service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, relating to sexual battery; chapter 800, relating to lewdness and indecent exposure; or chapter 827, relating to child abuse, commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(4) OWNERS OR OPERATORS OF COMPUTER SERVICES LIABLE.--It is unlawful for any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly to permit a subscriber to utilize the service to commit a violation of this section. Any person who violates this section commits a misdemeanor of the first degree, punishable by a fine not exceeding \$2,000.

(5) STATE CRIMINAL JURISDICTION.--A person is subject to prosecution in this state pursuant to chapter 910 for any conduct proscribed by this section which the person engages in, while either within or outside this state, if by such conduct the person commits a violation of this section involving a child residing in this state, or another person believed by the person to be a child residing in this state.

History.--s. 11, ch. 86-238; s. 213, ch. 91-224; s. 71, ch. 96-388; s. 3, ch. 2001-54.

847.0147 Obscene telephone service prohibited; penalty.--

(1) It is unlawful for any telephone subscriber to sell, offer for sale, or transmit, over telephone lines, any obscene material or message described and promoted as "adult" and of a nature which is commonly understood to be for the purposes of sexually oriented entertainment.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

History.--s. 3, ch. 88-283; s. 214, ch. 91-224.

847.02 Confiscation of obscene material.--Whenever anyone is convicted under s. [847.011](#), the court in awarding sentence shall make an order confiscating said obscene material and authorize the sheriff of the county in which the material is held to destroy the same. The sheriff shall file with the court a certificate of his or her compliance.

History.--s. 2, ch. 7359, 1917; RGS 5439; CGL 7582; s. 6, ch. 86-238; s. 1351, ch. 97-102.

847.03 Officer to seize obscene material.--Whenever any officer arrests any person charged with any offense under s. [847.011](#), the officer shall seize said obscene material and take the same into his or her custody to await the sentence of the court upon the trial of the offender.

History.--s. 3, ch. 7359, 1917; RGS 5440; CGL 7583; s. 7, ch. 86-238; s. 1352, ch. 97-102.

847.06 Obscene matter; transportation into state prohibited; penalty.--

(1) Whoever knowingly transports into the state or within the state for the purpose of sale or distribution any obscene book; magazine; periodical; pamphlet; newspaper; comic book; story; paper; written or printed story or article; writing; paper; card; picture; drawing; photograph; motion picture film; figure; image; phonograph record, or wire or tape or other recording, or other article capable of producing sound; or any other matter of obscene character shall be guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(2) When any person is convicted of a violation of this section, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his or her arrest.

History.--s. 1, ch. 29849, 1955; s. 1058, ch. 71-136; s. 1, ch. 79-134; s. 8, ch. 86-238; s. 1353, ch. 97-102.

847.07 Wholesale promotion of obscene materials; penalties.--

(1) As used in this section, "wholesale promote" means to manufacture, issue, sell, provide, deliver, transfer, transmit, publish, distribute, circulate, or disseminate, or offer or agree to do the same, with or without consideration, for purposes of resale or redistribution.

(2) Any person who knowingly wholesale promotes any obscene matter or performance, or in any manner knowingly hires, employs, uses, or permits any person to wholesale promote or assist in wholesale promoting any obscene matter or performance, is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(3) No person shall, as a condition to sale, allocation, consignment, or delivery for resale of any matter or performance, require that the purchaser or consignee receive for resale any other matter or performance reasonably believed by the purchaser or

consignee to be obscene; and no person shall deny or revoke any franchise, or threaten to do so, or impose or threaten to impose any penalty, financial or otherwise, by reason of the refusal or failure of any person to accept any such matter or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

History.--s. 1, ch. 73-120; s. 4, ch. 83-77; s. 9, ch. 86-238.

847.201 Obscene programming on cable television during promotional period unlawful; penalty; applicability.--

(1) It is unlawful for any owner or operator of any cable television service to provide on any basic cable channel during a promotional "free weekend" or other advertising period obscene programming or programming otherwise unprotected by the Constitution of the United States.

(2) Any person who violates the provisions of subsection (1) is guilty of a misdemeanor of the first degree, punishable by a fine of up to \$2,000.

(3) This section shall not apply to any owner or operator of any cable television service who:

(a) Provides to its subscribers of basic cable channels at least once annually, and to its new subscribers of basic cable channels at the time of subscription, at least 30 days' advance written notice that such aforesaid programming may be shown, which notice shall include the dates and times such programming may be shown; and

(b) Upon request of the subscribers of basic cable channels and during such promotional period, electronically "locks out" the aforesaid programming from the basic cable channels so that it is not received in the television receivers of such subscribers requesting not to receive such programming, or makes available at no cost to the subscribers of basic cable channels parental control devices, sometimes known as "lock boxes," which devices shall have the capability of "locking out" or denying reception to the television receivers of such aforesaid subscribers requesting same.

History.--s. 1, ch. 87-215.