

# COMPUTER-RELATED OFFENSES PROTECTING CHILDREN

By Dennis Nicewander, Assistant State Attorney  
www.locatethelaw.org

Offense	Statute	Degree	ACT
<a href="#">Sexual Performance-Use of child in</a>	827.071(2)	2 <sup>nd</sup> L6	Employs, authorizes, or induces a child to engage in a sexual performance, or being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance.
<a href="#">Sexual Performance-Promoting a</a>	827.071(3)	2 <sup>nd</sup> L6	Produces, directs, or promotes any performance which includes sexual conduct by a child.
<a href="#">Sexual Performance-Possess with intent to promote</a>	827.071(4)	2 <sup>nd</sup> L5	Possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole, or in part, includes any sexual conduct by a child. The possession of three or more copies of such image is prima facie evidence of an intent to promote.
<a href="#">Sexual Performance-Possession</a>	827.071(5)	3 <sup>rd</sup> L5	Possess a photograph, motion picture, exhibition, show, representation, or other presentation which in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each picture is a separate offense.
<a href="#">Computer Pornography-</a>	847.0135(2)	3 <sup>rd</sup> L6	Compiles, enters into, or transmits by use of computer; makes, prints publishes, or reproduces by other computerized means; knowingly causes or allows to be entered into or transmitted by use of computer; or 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. Not a defense that undercover officer involved in detection. <b>See 2007 changes below</b>
<a href="#">Computer Pornography-Solicitation of a child</a>	847.0135(3)	3 <sup>rd</sup> L7	Knowingly utilize a computer on-line service, Internet service, or local bulleting board service or other electronic device to:  (a) 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, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child; or  (b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,  Enhanced to 2nd degree if def. misrepresents age.
<a href="#">Traveling to Meet a Minor</a>	847.0135(4)(a) or (b)(parent)	2 <sup>nd</sup> L7	Any person who travels any distance to accomplish acts listed in 847.0135(3).
<a href="#">Lewd Exhibition</a>	847.0135(5)	2 <sup>nd</sup> L5	Masturbates or exhibits genitals in lewd manner live on the Internet. Ex. Webcam. Victim (or undercover agent) must be under 16 and located in Florida. Statute moved from 800.04(7) effective October 1, 2008.
<a href="#">Transmission of Pornography by Electronic Device (from</a>	847.0137(2)	3 <sup>rd</sup> L5	Any person in this state who knew or reasonably should have known that he or she was transmitting child pornography to another person in this state or in another jurisdiction.

<a href="#">within state)</a>			
<a href="#">Transmission of Pornography by Electronic Device (from outside state)</a>	847.0137(3)	3 <sup>rd</sup> L5	Any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography to any person in this state.
<a href="#">Transmission of Material Harmful to Minors (sender and recipient in state)</a>	847.0138(2)	3 <sup>rd</sup> L5	Any person in this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, to a specific individual known by the defendant to be a minor in this state. Only applies to email and applies to cops posing as minors.
<a href="#">Transmission of Material Harmful to Minors (sender out of state and recipient in state)</a>	847.0138(3)	3 <sup>rd</sup> L5	Any person in any jurisdiction other than this state who knew or believed that he was transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor in this state. Only applies to email and applies to cops posing as minors.
Felony Obscenity	847.011(1)(c)	3 <sup>rd</sup> L1	A person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors commits a felony of the third degree

Note: Sentencing Levels increased for most of these offenses effective July 1, 2005. Sexual Performance from 1 to 5. Computer solicitation from 6 to 7.

Note: Effective October 1, 2007, the following changes take effect: (775.0847)

A violation of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138 shall be reclassified to the next higher degree if: offender possesses 10 or more images of child pornography, regardless of content; and the content of at least one image contains one or more of the following:

- A child who is younger than 5 or Sadomasochistic abuse involving a child or Sexual battery involving a child or Sexual bestiality involving a child, or Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

In addition to raising 3<sup>rd</sup> degree felonies to 2<sup>nd</sup> degree felonies and 2<sup>nd</sup> degree felonies to 1<sup>st</sup> degree felonies, each offense will be reclassified one level above the rankings in 921.0022 or 921.0023.

Adds F.S. 827.071(6) which authorizes dual punishments for offenses under this section and any other section.

#### **Changes to Computer Pornography – 847.0135 effective October 1, 2007**

Amends F.S. 847.0135(3) concerning the solicitation of children via the Internet to include the phrase, “or any other device capable of electronic data storage or transmission.” This will now make the statute applicable to things such as cell phone text messages.

Amends F.S. 847.0135(3)(a) to include phrase, “or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.”

Adds F.S. 847.0135(3)(b) to make it a third degree felony to solicit, lure or entice a parent, legal guardian or custodian of a child (or a person believed to be a parent etc...) to consent to participation of child in the various listed acts.

Reclassifies offenses where the offender misrepresents his age from 3<sup>rd</sup> degree felony to 2<sup>nd</sup> degree.

Also provides that each separate use of computer online service, etc... constitute a separate offense.

Adds F.S. 847.0135(4) to make it a 2<sup>nd</sup> degree felony for a person to travel to meet a child as described in previous sections. Reclassified to a level 7.

Adds F.S. 847.0135 (7) which authorizes dual punishments for offenses under this section and any other section.