

**05 - DIOCESE OF ST. AUGUSTINE POLICY AND PROCEDURAL GUIDELINES
RELATING TO
PROTECTION OF CHILDREN AND VULNERABLE ADULTS**

I. INTRODUCTION

The Bishop of the Diocese of St. Augustine is committed to the well-being of those who are served by the Church. The People of God have a right to be able to trust those who minister to them in God's name. The violation of this trust through any sexual abuse by Church Personnel is a source of great pain, for those involved and for the entire Church community.

The Bishop of the Diocese of St. Augustine will make every reasonable effort to prevent sexual abuse, and to respond promptly to all allegations of abuse where there is a reasonable belief that abuse has occurred. The diocese of St. Augustine also will comply with all obligations of civil and canon law. The diocese of St. Augustine will promote healing where it is needed, provide education, training and guidance when it is appropriate, and implement procedures to minimize the risk of sexual abuse of minors or vulnerable adults with firm justice and mercy toward[s] all. No person, including clergy, who has been determined to have engaged in sexual abuse of a minor or vulnerable adult, will be allowed to remain in active ministry. Such actions violate Christian principles and are outside the scope of duties and employment of all Church Personnel. The diocese will not tolerate such behavior. This policy applies to all diocesan agencies, and all parishes and parish activities within the diocese.

Care will always be taken to protect the rights [of] all parties involved, particularly those of the person claiming to have been sexually abused and the person against whom the charge has been made. When the accusation has been proved to be unfounded, every step possible will be taken to restore the good name of the person falsely accused.

II. DEFINITIONS

For the purposes of this policy:

- (A) **ALLEGATION:** A statement or accusation of sexual abuse.
- (B) **CHILD OR MINOR:** A person less than eighteen (18) years of age.
- (C) **CLERGY:** Shall mean all priests and deacons who have faculties of the diocese.
- (D) **VULNERABLE ADULT:** Such persons as so defined in Chapter 415, Florida Statutes. A copy of the statutory definitions is attached.
- (E) **DCF:** The Florida Department of Children and Families.
- (F) **CHURCH PERSONNEL:** For purposes of this policy only, Church Personnel shall include any person who is employed by, or engaged in ministry, or providing service, either

directly or indirectly, for the diocese, an agency controlled by the Diocese, or a parish. Church Personnel shall include, but not be limited to, priests, deacons, religious, employees, and any volunteer involved in any diocesan or parish activity. "Personnel" as defined herein, has reference only to the applicability of this policy, and is not indicative of any agency or employment relationship between a diocese and the party whose compliance with this policy is sought.

(G) **SEXUAL ABUSE:** Sexual abuse means any act constituting sexual abuse as defined in Chapter 39 and Chapter 415, Florida Statutes, whether perpetuated against a child or vulnerable adult as defined herein. A copy of the applicable provisions of the statutes is attached to the end of this policy.

(H) **DIOCESAN CONTACT PERSON:** Person named by the bishop of the diocese of St. Augustine who can be contacted through the office of the Bishop of the diocese of St. Augustine.

(I) **PROMOTER OF JUSTICE:** Prosecuting attorney in Church courts.

(J) **SEXUAL EXPLOITATION/CHILD PORNOGRAPHY:** A violation of Florida Statutes: 827.071, 847.0135, 847.0137, or 847.0138, related to online sexual exploitation of a minor and child pornography shall be treated as an act of child abuse under this policy.

III. DISCLOSURE & REPORTING.

A. Summary and Purpose

This policy is intended to establish requirements and procedures to minimize the risk of sexual abuse by Church Personnel and the resulting harm to the victims and the Church community, and to provide guidance on how to respond to allegations of sexual abuse. All Church Personnel must comply with applicable laws regarding incidents of actual or suspected sexual abuse of minors or vulnerable adults and with these procedural guidelines.

B. Distribution of Policy

A copy of this policy shall be distributed to all diocesan agencies and parishes.

C. Obligation to Report Abuse

- (1) All Church Personnel who know, or have reasonable cause to suspect, that a child or vulnerable adult has been a victim of sexual abuse, shall immediately make any report required by law directly to the Department of Children and Families (DCF). Any mandatory report may be made by calling the toll free statewide abuse or neglect registry at 1-800- 96ABUSE, or by calling the local DCF office responsible for receiving such reports. Any verbal report to DCF, which is required by law to be confirmed in writing, shall be confirmed in writing to the local DCF office within

forty-eight (48) hours of making the verbal report. The statutory clergy confidentiality privilege, as provided in Section 39.204, F.S., and as described in Section 90.505, F.S., shall apply to all reporting required under this paragraph.

- . (2) All allegations of sexual abuse by Church Personnel or on church premises shall be reported promptly to the Diocesan Contact Person or the Chancellor's Office. Procedures for making a complaint will be readily available in printed form.
- . (3) Any report made to DCF should contain, when possible, the names and addresses of the child or vulnerable adult and of the child or vulnerable adult's parent, guardian, or other adult having custody and control of the child or vulnerable adult, the child or vulnerable adult's age, the nature and possible extent of the child or vulnerable adult's injuries, and any other information that the person reporting believes may be helpful with respect to the investigation of the alleged abuse, and the identity of the alleged perpetrator.
- . (4) If the complaint is not received from or does not involve the parent or guardian of the child or vulnerable adult, arrangements should be made to notify immediately the parent or guardian. Notice should not be given to the parent or guardian if he or she is the person against whom the complaint is made. Appropriate pastoral concern and support shall also be shown to all parties involved, including the family. All information relating to a child or vulnerable adult incident, in which a complaint is made against Church Personnel, shall be assembled and retained in a written form in a confidential manner.
- . (5) The diocese of St. Augustine will cooperate with public authorities about reporting in cases when the person alleged to have been abused is no longer a minor. In every instance, the diocese will advise and support a person's right to make a report to public authorities.
- . (6) In cases of child sexual abuse, the diocese of St. Augustine will not enter into confidentiality agreements except for grave or substantial reasons brought forward by the victim or survivor and noted in the text of the agreement.

IV. PASTORAL RESPONSE & REVIEW BOARD.

A. Pastoral Commitment

When an allegation of sexual abuse of a minor or vulnerable adult by any Clergy is received, a preliminary investigation in harmony with canon law will be initiated and conducted promptly and objectively. The accused will be encouraged to retain the assistance of civil and canonical counsel and will be promptly notified of the preliminary findings of the investigation. If a credible allegation of sexual abuse of a minor by Clergy is made, the alleged offender will be temporarily relieved of any ecclesiastical ministry or function, pending an investigation in harmony with canon law, which will promptly commence. The

diocese will exercise care not to interfere with any investigation by law enforcement. When there is sufficient evidence that sexual abuse of a minor has occurred, the Congregation of the Doctrine of the Faith shall be notified.

B. Assistance Coordinator

The diocese of St. Augustine will designate a competent assistance coordinator to aid in the immediate pastoral care of persons who claim to have been sexually abused by Clergy when they were minors or vulnerable adults. This assistance coordinator also will serve as the Diocesan Contact person in cases of sexual abuse, unless a different contact person is appointed.

C. Review Board

1. Membership

To assist the bishop in his work, the diocese of St. Augustine will have a Review Board that will function as a confidential consultative body established by the diocesan bishop, which will be composed of at least five persons of outstanding integrity and good judgment. The majority of the Review Board members will be laypersons who are not in the employ of the diocese; but at least one member should be a priest who is an experienced and respected pastor of the diocese. At least one member should have particular expertise in the treatment of the sexual abuse of minors or vulnerable adults. The members will be appointed for a term of three (3) years, which can be renewed. It is desirable that the Promoter of Justice and the Diocesan Attorney participate in the meetings of the Review Board.

2. Functions

The functions of this Review Board include:

- a. Advising the diocesan bishop; 1) in his assessment of allegations of sexual abuse of minors and vulnerable adults; and, 2) in his determination of suitability for ministry;
- b. Reviewing diocesan policies for dealing with sexual abuse of minors and vulnerable adults, offering advice on all aspects of these cases, whether retrospectively or prospectively.
- c. In order to respond effectively to allegations of sexual abuse against Clergy, the bishop may appoint individuals to investigate the allegations, which individuals may be members of the Review Board. The results of any investigation must be provided to the Review Board.

3. Procedures

- a. The Review Board or its designee shall report to the bishop regarding the allegation(s). At the bishop's request, the Review Board or its designee and the diocesan attorney shall meet with the bishop to respond to any questions he may have, or provide additional information desired by him. All information received by the Review Board shall be considered confidential and shall not be revealed by any member of the Review Board, except to the diocesan attorney, other members of the Review Board, and the bishop, unless compelled by law.
- b. If the allegation of sexual abuse of a minor or vulnerable adult is made against a bishop, the response process outlined herein shall be fully utilized with the following modification: where the Policy and Procedural Guidelines refer to the diocesan bishop, his role and function under these guidelines shall be assumed by the Metropolitan Archbishop or, should there be no Metropolitan Archbishop, by the senior suffragan bishop of the province. If an allegation is made against the Metropolitan Archbishop, then the role and function of the diocesan bishop under these guidelines shall be assumed by the senior suffragan bishop of the province. The Apostolic Nuncio shall also be notified of the allegation. In cases of financial demands for settlements involving allegations of any sexual misconduct with a minor by a bishop, the Metropolitan Archbishop will be informed. The senior suffragan bishop will be informed when such a demand has been made regarding the Metropolitan.

D. Removing Clergy From Ministry

Nothing in this section shall be construed to preclude the bishop from temporarily or permanently removing Clergy from ministry upon receipt of an allegation, either pending the Review Board's completion of its proceedings, or after, even if the accused is adjudicated not guilty or if criminal charges are not brought.

E. Communications Policy

Each diocese will develop a communications policy that reflects a commitment to transparency and openness. Within the confines of respect for the privacy and the reputation of the individuals involved, dioceses will deal as openly as possible with members of the community. This is especially so with regard to assisting and supporting parish communities directly affected by ministerial misconduct involving minors.

V. ABUSE BY CLERGY

A. Clinical Evaluation

If the credible allegation of sexual abuse of a minor or vulnerable adult involves Clergy, the diocesan bishop will ask him to undergo appropriate medical and psychological evaluation and intervention. The alleged offender may be requested to

seek, and may be urged voluntarily to comply with, an appropriate medical and psychological evaluation at a facility mutually acceptable to the diocese and to the accused.

B. Response to Admitted or Established Abuse

When sexual abuse by Clergy is admitted or is established after an appropriate investigation in accord with canon law, the following will pertain:

1. Diocesan policy will provide that for even a single act of sexual abuse of a minor or vulnerable adult—past, present, or future—the offending priest or deacon will be permanently removed from ministry. At all times, the diocesan bishop has the executive power of governance, through an administrative act, to remove an offending cleric from office, to remove or restrict his faculties, and to limit his exercise of priestly ministry. Because sexual abuse of a minor or vulnerable adult is a crime in all jurisdictions in the United States, for the sake of the common good and observing the provisions of canon law, the diocesan bishop shall exercise this power of governance to ensure that any priest who has committed even one act of sexual abuse of a minor or vulnerable adult as described above shall not continue in active ministry.
2. In every case, the processes provided for in canon law must be observed, and its various provisions be considered (cf. *Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State*, 1995; Letter from the Congregation for the Doctrine of the Faith, May 18, 2001). These provisions may include a request by the priest or deacon for dispensation from the obligations of Holy Orders and the loss of the clerical state, or a request by his diocesan bishop for dismissal from the clerical state, even without the consent of the priest or deacon. For the sake of due process, the accused is to be encouraged to retain the assistance of civil and canonical counsel. When necessary, the diocese will supply canonical counsel to a priest.
3. If the penalty of dismissal from the clerical state has not been applied, the offender ought to lead a life of prayer and penance. He will not be permitted to celebrate Mass publicly or to administer the sacraments. He will be instructed not to wear clerical garb, or to present himself publicly as a priest.
4. The priest or deacon may at any time request a dispensation from the obligations of the clerical state. In exceptional cases, the bishop may request of the Holy Father the dismissal of the priest or deacon from the clerical state *ex officio*, even without the consent of the priest or deacon.

C. Transfer Requirements

No priest or deacon who has committed an act of sexual abuse of a minor or vulnerable adult may be transferred for ministerial assignment to another diocese or

religious province. Before a priest or deacon can be transferred for residence to another diocese or religious province, the bishop shall forward in a confidential manner to the local bishop and religious ordinary of the proposed place of residence any and all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger to children, young people, or vulnerable adults. This shall apply even if the priest or deacon will reside in the local community of an institute of consecrated life or society of apostolic life.

Approved by the Bishop of the Diocese of St. Augustine on

Date: 1 September, 2016

/S/ Felipe J. Estévez

BISHOP OF THE DIOCESE OF ST. AUGUSTINE

Citations from Florida Statutes

From Section 415.102:

(24) "Sexual abuse" means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s.794.011(l)(h), fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

(26) "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

From Section 39.01 Definitions:

Section 39.01(63):

(63) "Sexual abuse of a child" means one or more of the following acts:

(a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or

2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for

the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or 2. Engage in a sexual performance, as defined by chapter 827.

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned or neglected by any person, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(d) Reporters in the following occupation categories are required to provide their names to the hotline staff:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
2. Health or mental health professional other than one listed in subparagraph 1;
3. Practitioner who relies solely on spiritual means for healing;
4. School teacher or other school official or personnel;
5. Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;
6. Law enforcement officer; or
7. Judge.

Section 39.204:

39.204 Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.--The privileged quality of communication between husband and wife and between any professional person and his or her patient or client, and any other privileged communication except that between attorney and client or the privilege provided in s. 90.505, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect

and shall not constitute grounds for failure to report as required by s. 39.201 regardless of the source of the information requiring the report, failure to cooperate with the department in its activities pursuant to this chapter, or failure to give evidence in any judicial proceeding relating to child abuse, abandonment, or neglect.

90.505 Privilege with respect to communications to clergy.--

(1) For the purposes of this section:

(a) A "member of the clergy" is a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him or her.

(b) A communication between a member of the clergy and a person is "confidential" if made privately for the purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.

(2) A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.

(3) The privilege may be claimed by:

(a) The person.

(b) The guardian or conservator of a person.

(c) The personal representative of a deceased person.

(d) The member of the clergy, on behalf of the person. The member of the clergy's authority to do so is presumed in the absence of evidence to the contrary.

Florida Statutes Relating to Child Pornography; See Para (J).

827.071 Sexual performance by a child; penalties.—

(1) As used in this section, the following definitions shall apply:

(a) "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.

(b) "Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

(c) "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

- (d) “Promote” 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.
- (e) “Sadomasochistic abuse” means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.
- (f) “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.
- (g) “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.
- (h) “Sexual conduct” means 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 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.”
- (i) “Sexual performance” means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.
- (j) “Simulated” means the explicit depiction of conduct set forth in paragraph (h) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.
- (2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age 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. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (4) It is unlawful for any person to 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 photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (5)(a) It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a

separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

847.0135 Computer pornography; prohibited computer usage; traveling to meet minor; penalties.—

(1) **SHORT TITLE.**—This section shall be known and may be cited as the “Computer Pornography and Child Exploitation Prevention Act.”

(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 OR DEVICES PROHIBITED.**—Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission 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,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.

775.084. Any person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Each separate use of a computer online service, Internet service, local bulletin board service, or

any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

(4) TRAVELING TO MEET A MINOR.—Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission 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 engage in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with 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, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) CERTAIN COMPUTER TRANSMISSIONS PROHIBITED.—

(a) A person who:

1. Intentionally masturbates;

2. Intentionally exposes the genitals in a lewd or lascivious manner; or

3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity

live over a computer online service, Internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or television monitor by a victim who is less than 16 years of age, commits lewd or lascivious exhibition in violation of this subsection. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this subsection shall not constitute a defense to a prosecution under this subsection.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition using a computer commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition using a computer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this subsection.

(6) OWNERS OR OPERATORS OF COMPUTER SERVICES LIABLE.—It is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use 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.

(7) 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, a child’s guardian, or another person believed by the person to be a child or a child’s guardian.

(8) EFFECT OF PROSECUTION.—Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

847.0137 Transmission of pornography by electronic device or equipment prohibited; penalties.—

- (1) For purposes of this section:
 - (a) “Minor” means any person less than 18 years of age.
 - (b) “Transmit” means the act of sending and causing to be delivered any image, information, or data from one or more persons or places to one or more other persons or places over or through any medium, including the Internet, by use of any electronic equipment or device.
- (2) Notwithstanding ss. 847.012 and 847.0133, any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (4) This section shall not be construed to prohibit prosecution of a person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section, for the transmission of child pornography, as defined in s. 847.001, to any person in this state.
- (5) A person is subject to prosecution in this state pursuant to chapter 910 for any act or conduct proscribed by this section, including a person in a jurisdiction other than this state, if the act or conduct violates subsection (3).

847.0138 Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties.—

- (1) For purposes of this section:
 - (a) “Known by the defendant to be a minor” means that the defendant had actual knowledge or believed that the recipient of the communication was a minor.
 - (b) “Transmit” means to send to a specific individual known by the defendant to be a minor via electronic mail.
- (2) Notwithstanding ss. 847.012 and 847.0133, any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, as defined in s. 847.001, to a specific individual known by the defendant to be a minor commits a felony of the

third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, as defined in s. 847.001, to a specific individual known by the defendant to be a minor commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.