

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/16/01 H4/2/01

A Bill

SENATE BILL 975

5 By: Senators K. Smith, B. Walker
6 By: *Representative Files*
7

For An Act To Be Entitled

10 AN ACT TO ADDRESS COMPUTER CRIMES; AND FOR OTHER
11 PURPOSES.

Subtitle

14 AN ACT TO ADDRESS COMPUTER CRIMES.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code Title 5, Chapter 27 is amended by adding an
20 additional subchapter to read as follows:

21 Subchapter 6 -- Computer Crimes Against Minors

22 5-27-601. Definitions.

23 For purposes of this subchapter:

24 (1) "Child" means any person under seventeen (17) years of age;

25 (2)(A) "Computer" means an electronic, magnetic, electrochemical, or
26 other high-speed data processing device performing logical, arithmetic, or
27 storage functions and includes any data storage facility or communications
28 facility directly related to or operating in conjunction with the device.

29 (B) "Computer" also includes any on-line service, internet
30 service, or local bulletin board, any electronic storage device, including a
31 floppy disk or other magnetic storage device, or any compact disk that has
32 read-only memory and the capacity to store audio, video, or written materials;

33 (3) "Computer network" means the interconnection of communications
34 lines with a computer through remote terminals or a complex consisting of two
35 (2) or more interconnected computers;

36 (4) "Computer program" means a set of instructions, statements, or

1 related data that, in actual or modified form, is capable of causing a
2 computer or a computer system to perform specified functions;

3 (5) "Computer software" means one (1) or more computer programs,
4 existing in any form, or any associated operational procedures, manuals, or
5 other documentation;

6 (6) "Computer system" means a set of related, connected, or unconnected
7 computers, other devices, and software;

8 (7) "Deviate sexual activity" means any act involving the penetration,
9 however slight, of the:

10 (A) Anus or mouth of one person by the penis of another person;

11 or

12 (B) Labia majora or anus of one person by any body member or
13 foreign instrument manipulated by another person;

14 (8) "Internet" means the international computer network of both federal
15 and non-federal interoperable packet switched data networks;

16 (9) "Performance" means any play, dance, act, drama, piece, interlude,
17 pantomime, show, scene, or other three-dimensional presentation or parts
18 whether performed live or photographed, filmed, videotaped, or visually
19 depicted by any other photographic, cinematic, magnetic, or electronic means;

20 (10) "Reproduction" means, but is not limited to, computer-generated
21 images;

22 (11) "Sexual intercourse" means penetration, however slight, of the
23 labia majora by a penis; and

24 (12) "Sexually explicit conduct" means actual or simulated:

25 (A) Sexual intercourse;

26 (B) Deviate sexual activity;

27 (C) Bestiality;

28 (D) Masturbation;

29 (E) Sadomasochistic abuse for the purpose of sexual stimulation;

30 or

31 (F) Lewd exhibition of the:

32 (i) Genitals or pubic area of any person; or

33 (ii) Breast of a female.

34
35 5-27-602. Distributing, possessing, or viewing matter depicting
36 sexually explicit conduct involving a child.

1 (a) A person commits distributing, possessing, or viewing of matter
2 depicting sexually explicit conduct involving a child if the person:

3 (1) Knowingly receives for the purpose of selling or knowingly
4 sells, procures, manufactures, gives, provides, lends, trades, mails,
5 delivers, transfers, publishes, distributes, circulates, disseminates,
6 presents, exhibits, advertises, offers, or agrees to offer, through any means,
7 including the internet, any photograph, film, videotape, computer program or
8 file, computer-generated image, video game, or any other reproduction or
9 reconstruction which depicts a child engaging in sexually explicit conduct; or

10 (2) Knowingly possesses or views through any means, including on
11 the Internet, any photograph, film, videotape, computer program or file,
12 computer-generated image, video game, or any other reproduction, which depicts
13 a child engaging in sexually explicit conduct.

14 (b) Distributing, possessing, or viewing of matter depicting sexually
15 explicit conduct involving a child is a:

16 (1) Class C felony for the first offense; and

17 (2) Class B felony for any subsequent offenses.

18 (c) It is an affirmative defense to a prosecution under this section
19 that the defendant in good faith reasonably believed that the child depicted
20 in the matter was seventeen (17) years of age or older.

21
22 5-27-603. Computer child pornography.

23 (a)(1) A person commits computer child pornography if the person:

24 (A) Knowingly compiles, enters into, or transmits by means
25 of computer, makes, prints, publishes, or reproduces by other computerized
26 means, knowingly causes or allows to be entered into or transmitted by means
27 of computer, or buys, sells, receives, exchanges, or disseminates, any notice,
28 statement, or advertisement, or any child's name, telephone number, place of
29 residence, physical characteristics, or other descriptive or identifying
30 information, for purposes of facilitating, encouraging, offering, or
31 soliciting sexually explicit conduct of or with any child or another
32 individual believed by the person to be a child, or the visual depiction of
33 the conduct; or

34 (B) Knowingly utilizes a computer online service, internet
35 service, or local bulletin board service to seduce, solicit, lure, or entice,
36 or attempt to seduce, solicit, lure, or entice, a child or another individual

1 believed by the person to be a child, to engage in sexually explicit conduct.

2 (2) Computer child pornography is a Class B felony.

3
4 5-27-604. Failure to report computer child pornography.

5 (a) A person commits failure to report computer child pornography if
6 the person:

7 (1) Is the owner, operator, or employee of a computer online
8 service, internet service, or bulletin board service; and

9 (2) The person knowingly fails to notify law-enforcement
10 officials that a subscriber is using the service to commit a violation of § 5-
11 27-603.

12 (b) Failure to report computer child pornography is a Class A
13 misdemeanor.

14
15 5-27-605. Computer exploitation of a child.

16 (a)(1) A person commits computer exploitation of a child in the first
17 degree if the person causes or permits a child to engage in sexually explicit
18 conduct if the person knows, has reason to know, or intends that the
19 prohibited conduct may be photographed, filmed, reproduced, or reconstructed
20 in any manner, including on the internet, or may be part of an exhibition or
21 performance.

22 (2)(A) Computer exploitation of a child in the first degree is a
23 Class C felony for the first offense.

24 (B) Computer exploitation of a child in the first degree is
25 a Class B felony for the second and subsequent offenses.

26 (3) Computer exploitation of a child in the first degree shall be
27 a Class B felony if the person is the parent, guardian, or other person
28 legally charged with the care or custody of the child.

29 (b)(1) A person commits computer exploitation of a child in the second
30 degree if the person photographs or films a child engaged in sexually explicit
31 conduct or uses any device, including a computer, to reproduce or reconstruct
32 the image of a child engaged in sexually explicit conduct.

33 (2) Computer exploitation of a child in the second degree is a
34 Class D felony.

35
36 5-27-606. Jurisdiction.

1 For the purpose of determining jurisdiction, a person is subject to
2 prosecution in this state for any conduct proscribed by this subchapter, if
3 the transmission that constitutes the offense either originates in this state
4 or is received in this state.

5
6 5-27-607. Determination of age of child.

7 (a) For purposes of this subchapter, the state must prove beyond a
8 reasonable doubt that the child who is depicted as or presents the appearance
9 of being under the age of seventeen (17) in any photograph, film, videotape,
10 computer program or file, computer-generated image, video game, or any other
11 reproduction or reconstruction is under the age of seventeen (17).

12 (b) If it becomes necessary for purposes of this subchapter to
13 determine whether a child depicted engaging in sexually explicit conduct, was
14 under seventeen (17) years of age, the court or jury may make this
15 determination by any of the following methods:

16 (1) Personal inspection of the child;

17 (2) Inspection of the photograph, film, videotape, computer
18 program or file, computer-generated image, video game, or any other
19 reproduction or reconstruction picture that depicts the child engaging in the
20 sexually explicit conduct;

21 (3) Expert medical testimony based on the appearance of the child
22 engaged in the sexually explicit conduct; or

23 (4) Any other method authorized by law.

24
25 SECTION 2. Arkansas Code Title 5, Chapter 41 is amended by adding an
26 additional subchapter to read as follows:

27 Subchapter 2-- Unlawful Computer Crimes

28 5-41-201. Definitions.

29 For purposes of this subchapter:

30 (1) "Access" means to intercept, instruct, communicate with, store data
31 in, retrieve from or otherwise make use of any resources of a computer,
32 network, or data;

33 (2)(A) "Computer" means an electronic, magnetic, electrochemical, or
34 other high-speed data processing device performing logical, arithmetic, or
35 storage functions and includes any data storage facility or communications
36 facility directly related to or operating in conjunction with the device.

1 (B) "Computer" also includes any on-line service, internet
2 service, or local bulletin board, any electronic storage device, including a
3 floppy disk or other magnetic storage device, or any compact disk that has
4 read-only memory and the capacity to store audio, video, or written materials;

5 (3)(A) "Computer contaminant" means any data, information, image,
6 program, signal, or sound that is designed or has the capability to:

7 (i) Contaminate, corrupt, consume, damage, destroy,
8 disrupt, modify, record, or transmit; or

9 (ii) Cause to be contaminated, corrupted, consumed,
10 damaged, destroyed, disrupted, modified, recorded, or transmitted, any other
11 data, information, image, program, signal, or sound contained in a computer,
12 system or network without the knowledge or consent of the person who owns the
13 other data, information, image, program, signal or sound, or the computer,
14 system or network.

15 (B) "Computer contaminant" includes but is not limited to:

16 (i) A virus, worm, or Trojan horse; or

17 (ii) Any other similar data, information, image, program,
18 signal or sound that is designed or has the capability to prevent, impede,
19 delay or disrupt the normal operation or use of any component, device,
20 equipment, system, or network;

21 (4) "Data" means a representation of any form of information,
22 knowledge, facts, concepts, or instructions which is being prepared or has
23 been formally prepared and is intended to be processed, is being processed, or
24 has been processed in a system or network;

25 (5) "Encryption" means the use of any protection or disruptive measure,
26 including, without limitation, cryptography, enciphering, encoding, or a
27 computer contaminant, to:

28 (A) Prevent, impede, delay or disrupt access to any data,
29 information, image, program, signal, or sound;

30 (B) Cause or make any data, information, image, program, signal,
31 or sound unintelligible or unusable; or

32 (C) Prevent, impede, delay or disrupt the normal operation or use
33 of any component, device, equipment, system, or network;

34 (6) "Information service" means a service that is designed or has the
35 capability to generate, process, store, retrieve, convey, emit, transmit,
36 receive, relay, record, or reproduce any data, information, image, program,

1 signal, or sound by means of any component, device, equipment, system, or
2 network, including, but not limited to, by means of:

3 (A) A computer, computer system, computer network, modem, or
4 scanner;

5 (B) A telephone, cellular phone, satellite phone, pager, personal
6 communications device, or facsimile machine;

7 (C) Any type of transmitter or receiver; or

8 (D) Any other component, device, equipment, system, or network
9 that uses analog, digital, electronic, electromagnetic, magnetic, or optical
10 technology;

11 (7)(A) "Network" means a set of related, remotely connected devices and
12 facilities, including more than one (1) system, with the capability to
13 transmit data among any of the devices and facilities.

14 (B) "Network" includes, but is not limited to, a local, regional,
15 or global computer network;

16 (8) "Program" means an ordered set of data representing coded
17 instructions, or statements which can be executed by a computer and cause the
18 computer to perform one or more tasks;

19 (9) "Property" means anything of value and includes a financial
20 instrument, information, electronically produced data, program, and any other
21 tangible or intangible item of value.

22 (10) "Provider" means any person who provides an information service;

23 (11) "Provider of internet service" means any provider who provides
24 subscribers with access to the internet or an electronic mail address or both;
25 and

26 (12) "System" means a set of related equipment, whether or not
27 connected, which is used with or for a computer.

28
29 5-41-202. Unlawful acts regarding computers.

30 (a) A person commits an unlawful act regarding a computer if the person
31 knowingly and without authorization:

32 (1) Modifies, damages, destroys, discloses, uses, transfers,
33 conceals, takes, retains possession of, copies, obtains or attempts to obtain
34 access to, permits access to or causes to be accessed, or enters data or a
35 program which exists inside or outside a computer, system, or network;

36 (2) Modifies, destroys, uses, takes, damages, transfers,

1 conceals, copies, retains possession of, obtains or attempts to obtain access
2 to, permits access to or causes to be accessed, equipment or supplies that are
3 used or intended to be used in a computer, system, or network;

4 (3) Destroys, damages, takes, alters, transfers, discloses,
5 conceals, copies, uses, retains possession of, obtains or attempts to obtain
6 access to, permits access to or causes to be accessed, a computer, system, or
7 network;

8 (4) Obtains and discloses, publishes, transfers, or uses a device
9 used to access a computer, network, or data; or

10 (5) Introduces, causes to be introduced or attempts to introduce
11 a computer contaminant into a computer, system, or network.

12 (b) An unlawful act regarding a computer is a Class A misdemeanor.

13 (c) An unlawful act regarding a computer shall be a Class C felony if
14 the act:

15 (1) Was committed to devise or execute a scheme to defraud or
16 illegally obtain property;

17 (2) Caused damage in excess of five hundred dollars (\$500); or

18 (3) Caused an interruption or impairment of a public service,
19 including, without limitation, a governmental operation, a system of public
20 communication or transportation, or a supply of water, gas, or electricity.

21
22 5-41-203. Unlawful interference with access to computers - Unlawful use
23 or access of computers.

24 (a)(1) A person commits unlawful interference with access to computers
25 if the person knowingly and without authorization interferes with, denies, or
26 causes the denial of access to or use of a computer, system, or network to a
27 person who has the duty and right to use it.

28 (2) Unlawful interference with access to computers is a Class A
29 misdemeanor.

30 (b)(1) A person commits unlawful use or access to computers if the
31 person knowingly and without authorization uses, causes the use of, accesses,
32 attempts to gain access to, or causes access to be gained to a computer,
33 system, network, telecommunications device, telecommunications service, or
34 information service.

35 (2) Unlawful use or access to computers is a Class A misdemeanor.

36 (c) If the violation of subsections (a) or (b) of this section was

1 committed to devise or execute a scheme to defraud or illegally obtain
2 property, the person is guilty of a Class C felony;

3 (d) It is an affirmative defense to a charge made pursuant to this
4 section that at the time of the alleged offense the person reasonably believed
5 that:

6 (1) The person was authorized to use or access the computer,
7 system, network, telecommunications device, telecommunications service, or
8 information service and the use or access by the person was within the scope
9 of that authorization; or

10 (2) The owner or other person authorized to give consent would
11 authorize the person to use or access the computer, system, network,
12 telecommunications device, telecommunications service, or information service.

13 (e) A person who intends to offer an affirmative defense provided in
14 subsection (d) of this section at a trial or preliminary hearing shall, not
15 less than fourteen (14) calendar days before the trial or hearing or at such
16 other time as the court may direct, file and serve on the prosecuting attorney
17 a notice of that intent.

18
19 5-41-204. Unlawful use of encryption.

20 (a) A person commits unlawful use of encryption if the person knowingly
21 uses or attempts to use encryption, directly or indirectly, to:

22 (1) Commit, facilitate, further, or promote any criminal offense;

23 (2) Aid, assist, or encourage another person to commit any
24 criminal offense;

25 (3) Conceal the commission of any criminal offense;

26 (4) Conceal or protect the identity of a person who has committed
27 any criminal offense; or

28 (5) Delay, hinder, or obstruct the administration of the law.

29 (b) A person who violates any provision of this section commits a
30 criminal offense that is separate and distinct from any other criminal offense
31 and may be prosecuted and convicted pursuant to this section whether or not
32 the person or any other person is or has been prosecuted or convicted for any
33 other criminal offense arising out of the same facts as the violation of this
34 section.

35 (c)(1) Unlawful use of encryption is a Class D felony if the criminal
36 offense concealed by encryption is a Class Y, Class A, or Class B felony.

1 (2) Unlawful use of encryption is a Class A misdemeanor if the
2 criminal offense concealed by encryption is a Class C or Class D felony, or an
3 unclassified felony.

4 (3) Other unlawful uses of encryption shall be a misdemeanor
5 classified one (1) degree below the misdemeanor constituted by the criminal
6 offense concealed by encryption.

7
8 5-41-205. Unlawful acts involving electronic mail.

9 (a) A person commits an unlawful act involving electronic mail if, with
10 the purpose to devise or execute a scheme to defraud or illegally obtain
11 property, the person:

12 (1) Knowingly and with the purpose to transmit or cause to be
13 transmitted the item of electronic mail to the electronic mail address of one
14 (1) or more recipients without their knowledge of or consent to the
15 transmission falsifies or forges any data, information, image, program,
16 signal, or sound that:

17 (A) Is contained in the header, subject line, or routing
18 instructions of an item of electronic mail; or

19 (B) Describes or identifies the sender, source, point of
20 origin, or path of transmission of an item of electronic mail;

21 (2) Purposely transmits or causes to be transmitted an item of
22 electronic mail to the electronic mail address of one or more recipients
23 without their knowledge of or consent to the transmission, if the person knows
24 or has reason to know that the item of electronic mail contains or has been
25 generated or formatted with:

26 (A) An internet domain name that is being used without the
27 consent of the person who holds the internet domain name; or

28 (B) Any data, information, image, program, signal, or sound
29 that has been used intentionally in the header, subject line or routing
30 instructions of the item of electronic mail to falsify or misrepresent:

31 (i) The identity of the sender; or

32 (ii) The source, point of origin or path of
33 transmission of the item of electronic mail; or

34 (3) Knowingly sells, gives, or otherwise distributes or possesses
35 with the intent to sell, give, or otherwise distribute any data, information,
36 image, program, signal, or sound which is designed or intended to be used to

1 falsify or forge any data, information, image, program, signal, or sound that:

2 (A) Is contained in the header, subject line, or routing
3 instructions of an item of electronic mail; or

4 (B) Describes or identifies the sender, source, point of
5 origin, or path of transmission of an item of electronic mail.

6 (b) Subdivision (a)(2) does not apply to a provider of internet service
7 who, in the course of providing service, transmits, or causes to be
8 transmitted an item of electronic mail on behalf of another person, unless the
9 provider of internet service is the person who first generates the item of
10 electronic mail.

11 (c) An unlawful act involving electronic mail is a Class D felony.

12
13 5-41-206. Computer password disclosure.

14 (a) A person commits computer password disclosure if the person
15 purposely and without authorization discloses a number, code, password, or
16 other means of access to a computer or computer network.

17 (b) Computer password disclosure is a Class A misdemeanor.

18 (c) If the violation of subsection (a) of this section was committed to
19 devise or execute a scheme to defraud or illegally obtain property, the person
20 is guilty of a Class D felony.

21
22 SECTION 3. Arkansas Code § 12-12-903(13)(A) is amended to read as
23 follows:

24 (13) "Sex offense" means:

25 (A)(i) Rape, § 5-14-103;

26 (ii) Carnal abuse in the first degree, § 5-14-104;

27 (iii) Carnal abuse in the second degree, § 5-14-105;

28 (iv) Carnal abuse in the third degree, § 5-14-106;

29 (v) Sexual misconduct, § 5-14-107;

30 (vi) Sexual abuse in the first degree, § 5-14-108;

31 (vii) Sexual abuse in the second degree, § 5-14-109;

32 (viii) Sexual solicitation of a child, § 5-14-110;

33 (ix) Violation of a minor in the first degree, § 5-14-120;

34 (x) Violation of a minor in the second degree, § 5-14-121;

35 (xi) Incest, § 5-26-202;

36 (xii) Engaging children in sexually explicit conduct for use

- 1 in visual or print medium, § 5-27-303;
- 2 (xiii) Transportation of minors for prohibited sexual
- 3 conduct, § 5-27-305;
- 4 (xiv) Employing or consenting to use of child in sexual
- 5 performance, § 5-27-402;
- 6 (xv) Producing, directing, or promoting sexual performance,
- 7 § 5-27-403;
- 8 (xvi) Promoting prostitution in the first degree, § 5-70-
- 9 104;
- 10 (xvii) Stalking, § 5-71-229;
- 11 (xviii) Indecent exposure to a person under the age of
- 12 twelve (12) years, § 5-14-112(b); ~~or~~
- 13 (xix) Exposing another person to human immunodeficiency
- 14 virus, § 5-14-123;
- 15 (xx) Computer child pornography; or
- 16 (xxi) Computer exploitation of a child in the first degree;
- 17 */s/ K. Smith, et al.*

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36