

SENATE BILL 498

By Haynes

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 17, relative to pornography.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 10, is amended by adding the following new section thereto:

39-17-1009.

(a)

(1) It is an offense for any person to knowingly possess material that includes an adapted or modified depiction of an identifiable minor engaged in sexual activity or simulated sexual activity that is patently offensive.

(2) It is an offense for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material that includes an adapted or modified depiction of an identifiable minor engaged in sexual activity or simulated sexual activity that is patently offensive.

(b)

(1) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials possessed is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subdivision (d)(1).

(2) A person who violates subdivision (a)(2) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(2) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (d)(2).

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony and any other relevant evidence, in determining whether a person knowingly possessed, promoted, sold, distributed, transported, purchased, exchanged or possessed the material or whether the material or image represents an adapted or modified depiction of an identifiable minor.

(d)

(1) A violation of subdivision (a)(1) is a Class D felony; however, if the number of individual images, materials, or combination of images and materials, that are possessed is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials or combination of images and materials exceeds one hundred (100), the offense shall be a Class B felony.

(2) A violation of subdivision (a)(2) is a Class C felony; however, if the number of individual images, materials or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or

exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(e) In a prosecution under this section, the state is required to prove the actual identity and age of the minor that is depicted in the material.

(f) A person is subject to prosecution in this state under this section for any conduct that occurs in this state or if the minor that is depicted in the material resides in this state.

SECTION 2. Tennessee Code Annotated, Section 39-17-1006, is amended by deleting the language “§§ 39-17-1001--39-17-1005” wherever it appears and substituting instead the language “§ 39-17-1002, § 39-17-1003, § 39-17-1004, § 39-17-1005 or § 39-17-1009” and by deleting the language "are being" in the first sentence and substituting instead the language "is being".

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it and shall apply to offenses occurring on or after such date.