

By Senator Harrell

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1 A bill to be entitled
2 An act relating to cyberharassment; amending s.
3 784.049, F.S.; revising legislative intent; redefining
4 the terms "personal identifying information" and
5 "sexually cyberharass"; providing criminal penalties;
6 reenacting ss. 901.15(16), 901.41(5), and 933.18(11),
7 F.S., relating to lawful arrests by officers without a
8 warrant, prearrest diversion programs, and when a
9 warrant may be issued for the search of a private
10 dwelling, respectively, to incorporate the amendment
11 made to s. 784.049, F.S., in references thereto;
12 providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Section 784.049, Florida Statutes, is amended to
17 read:

18 784.049 Sexual cyberharassment.—

19 (1) The Legislature finds that:

20 (a) A person depicted in a sexually explicit image taken
21 with the person's consent has a reasonable expectation that the
22 image will remain private.

23 (b) It is becoming a common practice for persons to publish
24 a sexually explicit image of another to Internet websites or to
25 disseminate such sexually explicit image of another by
26 electronic means without the depicted person's consent, for no
27 legitimate purpose, with the intent of causing substantial
28 emotional distress to the depicted person.

29 (c) When such images are published on Internet websites or

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30 disseminated via electronic means, they are able to be viewed
31 indefinitely by persons worldwide and are able to be easily
32 reproduced and shared.

33 (d) The publication of such images on Internet websites or
34 the dissemination of such images via electronic means creates a
35 permanent record of the depicted person's private nudity or
36 private sexually explicit conduct.

37 (e) The existence of such images on Internet websites or
38 the dissemination of such images without the consent of all
39 parties depicted causes those depicted ~~in such images~~
40 significant psychological harm.

41 (f) Safeguarding the psychological well-being of persons
42 depicted in such images is compelling.

43 (2) As used in this section, the term:

44 (a) "Image" includes, but is not limited to, any
45 photograph, picture, motion picture, film, video, or
46 representation.

47 (b) "Personal identification information" means any
48 information that identifies an individual, including, but not
49 limited to, a name, a postal or an e-mail address, a telephone
50 number, a social security number, a date of birth, or any unique
51 physical representation ~~has the same meaning as provided in s.~~
52 ~~817.568.~~

53 (c) "Sexually cyberharass" means to publish on an Internet
54 website or to disseminate via electronic means to another person
55 a sexually explicit image of a person that contains or conveys
56 the personal identification information of the depicted person
57 ~~to an Internet website~~ without the depicted person's consent,
58 for no legitimate purpose, with the intent of causing

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59 substantial emotional distress to the depicted person.

60 (d) "Sexually explicit image" means any image depicting
61 nudity, as defined in s. 847.001, or depicting a person engaging
62 in sexual conduct, as defined in s. 847.001.

63 (3) (a) Except as provided in paragraph (b), a person who
64 willfully and maliciously sexually cyberharasses another person
65 commits a misdemeanor of the first degree, punishable as
66 provided in s. 775.082 or s. 775.083.

67 (b) A person who has one prior conviction for sexual
68 cyberharassment and who commits a second or subsequent sexual
69 cyberharassment commits a felony of the third degree, punishable
70 as provided in s. 775.082, s. 775.083, or s. 775.084.

71 (4) (a) A law enforcement officer may arrest, without a
72 warrant, any person that he or she has probable cause to believe
73 has violated this section.

74 (b) Upon proper affidavits being made, a search warrant may
75 be issued to further investigate violations of this section,
76 including warrants issued to search a private dwelling.

77 (5) An aggrieved person may initiate a civil action against
78 a person who violates this section to obtain all appropriate
79 relief in order to prevent or remedy a violation of this
80 section, including the following:

81 (a) Injunctive relief.

82 (b) Monetary damages to include \$5,000 or actual damages
83 incurred as a result of a violation of this section, whichever
84 is greater.

85 (c) Reasonable attorney fees and costs.

86 (6) The criminal and civil penalties of this section do not
87 apply to:

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88 (a) A provider of an interactive computer service as
89 defined in 47 U.S.C. s. 230(f), information service as defined
90 in 47 U.S.C. s. 153, or communications service as defined in s.
91 202.11, that provides the transmission, storage, or caching of
92 electronic communications or messages of others; other related
93 telecommunications or commercial mobile radio service; or
94 content provided by another person; or

95 (b) A law enforcement officer, as defined in s. 943.10, or
96 any local, state, federal, or military law enforcement agency,
97 that publishes a sexually explicit image in connection with the
98 performance of his or her duties as a law enforcement officer,
99 or law enforcement agency.

100 (7) A violation of this section is committed within this
101 state if any conduct that is an element of the offense, or any
102 harm to the depicted person resulting from the offense, occurs
103 within this state.

104 Section 2. For the purpose of incorporating the amendment
105 made by this act to section 784.049, Florida Statutes, in a
106 reference thereto, subsection (16) of section 901.15, Florida
107 Statutes, is reenacted to read:

108 901.15 When arrest by officer without warrant is lawful.—A
109 law enforcement officer may arrest a person without a warrant
110 when:

111 (16) There is probable cause to believe that the person has
112 committed a criminal act of sexual cyberharassment as described
113 in s. 784.049.

114 Section 3. For the purpose of incorporating the amendment
115 made by this act to section 784.049, Florida Statutes, in a
116 reference thereto, subsection (5) of section 901.41, Florida

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117 Statutes, is reenacted to read:

118 901.41 Prearrest diversion programs.—

119 (5) ELIGIBILITY.—A violent misdemeanor, a misdemeanor crime
120 of domestic violence, as defined in s. 741.28, or a misdemeanor
121 under s. 741.29, s. 741.31, s. 784.046, s. 784.047, s. 784.048,
122 s. 784.0487, or s. 784.049 does not qualify for a civil citation
123 or prearrest diversion program.

124 Section 4. For the purpose of incorporating the amendment
125 made by this act to section 784.049, Florida Statutes, in a
126 reference thereto, subsection (11) of section 933.18, Florida
127 Statutes, is reenacted to read:

128 933.18 When warrant may be issued for search of private
129 dwelling.—No search warrant shall issue under this chapter or
130 under any other law of this state to search any private dwelling
131 occupied as such unless:

132 (11) An instrumentality or means by which sexual
133 cyberharassment has been committed in violation of s. 784.049,
134 or evidence relevant to proving that sexual cyberharassment has
135 been committed in violation of s. 784.049, is contained therein.

136

137 If, during a search pursuant to a warrant issued under this
138 section, a child is discovered and appears to be in imminent
139 danger, the law enforcement officer conducting such search may
140 remove the child from the private dwelling and take the child
141 into protective custody pursuant to chapter 39. The term
142 "private dwelling" shall be construed to include the room or
143 rooms used and occupied, not transiently but solely as a
144 residence, in an apartment house, hotel, boardinghouse, or
145 lodginghouse. No warrant shall be issued for the search of any

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146 private dwelling under any of the conditions hereinabove
147 mentioned except on sworn proof by affidavit of some creditable
148 witness that he or she has reason to believe that one of said
149 conditions exists, which affidavit shall set forth the facts on
150 which such reason for belief is based.

151 Section 5. This act shall take effect July 1, 2019.