SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 116

SPONSOR: Criminal Justice Committee and Senator Geller

SUBJECT: Cyberstalking

DATE: January 29, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable/CS
2.			JU	
3.			APJ	
4.			AP	
5.				
6.				

I. Summary:

The Committee Substitute for Senate Bill 116 would amend s. 784.048, F.S., to specifically include "cyberstalking" as an activity that can be an element of the offense of stalking. Cyberstalking is harrassment through the use of electronic mail or electronic communication. The CS would also expand the definition of aggravated stalking to include the making of a threat that places a person in reasonable fear of death or bodily injury of the person's child, sibling, spouse, parent, or dependent. Currently, only a threat against a person's own life or body is included in aggravated stalking.

This CS substantially amends the following section of the Florida Statutes: 784.048. The CS reenacts, without change, the following sections of the Florida Statutes: 775.084(1)(d), 790.065(2)(c), 921.0022(3)(f), 921.0022(3)(g), and 960.001(1)(b).

II. Present Situation:

A. Section 784.048

Section 794.048, F.S., prohibits stalking, which is the willful, repeated and malicious following or harassment of one person by another. "Harassment" is defined as engaging in a course of conduct directed at a specific person that causes substantial emotional distress in that person and serves no legitimate purpose. "Course of conduct" is defined as a pattern of conduct composed of a series of acts over a period of time, no matter how short, evidencing a continuity of purpose. Constitutionally protected activities, such as picketing or other organized protests, are excluded from the definition of course of conduct.

Stalking is a first degree misdemeanor. Aggravated stalking, which requires proof of an additional element, is a third degree felony. The additional element required to prove aggravated stalking is either: (1) that the victim was a minor under 16 years of age; (2) that the offender was subject to an injunction or other court-imposed prohibition of conduct toward the victim or the victim's property; or (3) that the offender makes a credible threat with the intent to place the victim in reasonable fear of death or bodily injury.

The constitutionality of s. 784.048, F.S., has been upheld by the Florida Supreme Court. In *Bouters v. State*, 659 So.2d 235 (Fla. 1995), the Court found that the conduct prohibited by the stalking statute is clearly criminal and not protected by the First Amendment right of free speech, and that the statute is not vague or overbroad in the type of conduct it prohibits. The amendment to specifically include cyberstalking would not change the constitutional analysis.

According to current statistics from the Department of Corrections, 145 inmates have a primary offense falling under s. 784.048, F.S., and 598 offenders are serving community supervision for violations of the stalking statute.

B. Information Service Technology Development Task Force

In June 1999, the Legislature created the Information Service Technology Development Task Force. The task force's mission was to focus on the development of state policies that would enable Florida to compete successfully in the information age.

The task force's eLaws Civil and Criminal Subcommittee noted that most of Florida's laws were created before the rapid proliferation of Internet technology. The subcommittee recommended the creation or amendment of certain laws in order to thwart possible use of the Internet to bypass the intent of state law and to continue the law's protections into the Internet world. One recommendation was to amend s. 784.048, F.S., to specifically include cyberstalking. Common examples of cyberstalking include the sending of hateful, obscene or threatening e-mail, harassment in Internet chat rooms, and the sending of computer viruses. The subcommittee found that cyberstalking can have the same effect as more traditional forms of stalking, and that stalking in any form can escalate to more direct actions such as threats or physical attack.

The task force found that most states have made stalking illegal and approximately half have laws specifically prohibiting cyberstalking. Florida's stalking law makes it illegal to "engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose." Most forms of cyberstalking would probably fit within the current definition, but specific inclusion of the term eliminates any doubt.

III. Effect of Proposed Changes:

This CS adds cyberstalking to "following" and "harassing" as prohibited acts under s. 784.048, F.S. As defined in the CS, cyberstalk means to engage in a course of conduct to communicate, or cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, which causes substantial emotional distress in such person and serves no legitimate purpose.

The CS also amends s. 784.048(3), F.S., to expand the scope of aggravated stalking to include threats made against close family members of the person to whom the harassment is directed. Current law embraces threats made directly against the victim. The CS would define aggravated stalking to include credible threats made by a stalker with the intent to place a person in reasonable fear of his or her own death or bodily injury, or the death or bodily injury of the person's child, sibling, spouse, parent, or dependant.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There could be an impact if cases are prosecuted that could not be prosecuted under the existing law. This impact would likely be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.