

By Senator Ring

32-812-07

1                                   A bill to be entitled  
2           An act relating to stalking; amending s.  
3           784.048, F.S.; redefining the terms "harass,"  
4           "credible threat," and "cyberstalk"; defining  
5           the terms "electronic communication,"  
6           "electronic communication device," and  
7           "immediate family"; providing that a person who  
8           willfully, maliciously, and repeatedly follows,  
9           harasses, or cyberstalks a person 65 years of  
10          age or older commits the offense of aggravated  
11          stalking, a felony of the second degree;  
12          providing criminal penalties; providing for  
13          reclassification of criminal penalties for  
14          certain offenses; providing for a civil cause  
15          of action and remedies; providing that the  
16          civil remedies are in addition to any other  
17          civil, administrative, or criminal remedies  
18          provided by law; providing an effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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22           Section 1. Section 784.048, Florida Statutes, is  
23 amended to read:

24           784.048 Stalking; definitions; penalties.--

25           (1) As used in this section, the term:

26           (a) "Harass" means to engage in a course of conduct,  
27 or to cause or encourage another to engage in a course of  
28 conduct, directed at a specific person which ~~that~~ causes  
29 substantial emotional distress in such person and serves no  
30 legitimate purpose.

1           (b) "Course of conduct" means a pattern of conduct  
2 composed of a series of acts over a period of time, however  
3 short, evidencing a continuity of purpose. Constitutionally  
4 protected activity is not included within the meaning of  
5 "course of conduct." Such constitutionally protected activity  
6 includes picketing or other organized protests.

7           (c) "Credible threat" means any ~~a~~ threat, including a  
8 threat delivered by means of an electronic communication  
9 device, made with the intent to cause the person who is the  
10 target of the threat to reasonably fear bodily injury or death  
11 to himself or herself or to a member of his or her immediate  
12 family for his or her safety. ~~The threat must be against the~~  
13 ~~life of, or a threat to cause bodily injury to, a person.~~

14           (d) "Cyberstalk" means to engage in a course of  
15 conduct, or to cause or encourage another to engage in a  
16 course of conduct, to communicate, or to cause to be  
17 communicated, words, images, or language by or through the use  
18 of electronic mail or electronic communication, directed at a  
19 specific person, causing substantial emotional distress to  
20 that person and serving no legitimate purpose.

21           (e) "Electronic communication" means any transfer of  
22 signs, signals, writing, images, sounds, data, or intelligence  
23 of any nature transmitted in whole or in part by a wire,  
24 radio, electromagnetic, photoelectronic or photooptical system  
25 that affects interstate or foreign commerce.

26           (f) "Electronic communication device" means any type  
27 of instrument, device, machine, equipment, or software that is  
28 capable of transmitting, acquiring, encrypting, transferring,  
29 decrypting, or receiving any signs, signals, writings, data,  
30 images, sounds, or intelligence of any nature by wire, radio,  
31 optical, or other electromagnetic system. The term includes,

1 but is not limited to, telephones, cellular phones, computers,  
2 video recorders, fax machines, or pagers.

3 (g) "Immediate family" means spouses, former spouses,  
4 persons related by blood or marriage, persons who are  
5 presently residing together as if a family or who have resided  
6 together in the past as if a family, and persons who are  
7 parents of a child in common regardless of whether they have  
8 been married. With the exception of persons who have a child  
9 in common, the immediate family members must be currently  
10 residing or have within the previous 6 months resided together  
11 in the same single dwelling unit.

12 (2) Any person who willfully, maliciously, and  
13 repeatedly follows, harasses, or cyberstalks another person  
14 commits the offense of stalking, a misdemeanor of the first  
15 degree, punishable as provided in s. 775.082 or s. 775.083.

16 (3) Any person who willfully, maliciously, and  
17 repeatedly follows, harasses, or cyberstalks another person,  
18 and purposefully engages in a course of conduct involving  
19 ~~makes~~ a credible threat with the intent to place that person  
20 in reasonable fear of death or bodily injury of the person, or  
21 the person's immediate family child, sibling, spouse, parent,  
22 ~~or dependent~~, commits the offense of aggravated stalking, a  
23 felony of the third degree, punishable as provided in s.  
24 775.082, s. 775.083, or s. 775.084.

25 (4) Any person who, after an injunction for protection  
26 against repeat violence, sexual violence, or dating violence  
27 pursuant to s. 784.046, or an injunction for protection  
28 against domestic violence pursuant to s. 741.30, or after any  
29 other court-imposed prohibition of conduct toward the subject  
30 person or that person's property, knowingly, willfully,  
31 maliciously, and repeatedly follows, harasses, or cyberstalks

1 another person commits the offense of aggravated stalking, a  
2 felony of the third degree, punishable as provided in s.  
3 775.082, s. 775.083, or s. 775.084.

4 (5) Any person who willfully, maliciously, and  
5 repeatedly follows, harasses, or cyberstalks a minor under 16  
6 years of age commits the offense of aggravated stalking, a  
7 felony of the third degree, punishable as provided in s.  
8 775.082, s. 775.083, or s. 775.084.

9 (6) Any law enforcement officer may arrest, without a  
10 warrant, any person he or she has probable cause to believe  
11 has violated the provisions of this section.

12 (7) Any person who, after having been sentenced for a  
13 violation of s. 794.011 or s. 800.04, and prohibited from  
14 contacting the victim of the offense under s. 921.244,  
15 willfully, maliciously, and repeatedly follows, harasses, or  
16 cyberstalks the victim commits the offense of aggravated  
17 stalking, a felony of the third degree, punishable as provided  
18 in s. 775.082, s. 775.083, or s. 775.084.

19 (8) Any person who willfully, maliciously, and  
20 repeatedly follows, harasses, or cyberstalks a person 65 years  
21 of age or older, regardless of whether he or she knows or has  
22 reason to know the age of the victim, commits the offense of  
23 aggravated stalking, a felony of the second degree, punishable  
24 as provided in s. 775.082, s. 775.083, or s. 775.084.

25 (9) If a person is charged with violating any  
26 provision of this section and conceals his or her  
27 identification from the person who is the victim of the  
28 violation, uses the electronic bandwidth of another person  
29 while violating this section, or destroys evidence of a  
30 person's violation of this section, the offense for which the  
31 person is charged shall be reclassified as follows:

1           (a) In the case of aggravated stalking of a person 65  
2 years of age or older, from a felony of the second degree to a  
3 felony of the first degree.

4           (b) In the case of aggravated stalking of a minor  
5 younger than 16 years of age, from a felony of the third  
6 degree to a felony of the second degree.

7           (c) In the case of aggravated stalking, from a felony  
8 of the third degree to a felony of the second degree.

9           (d) In the case of stalking, from a misdemeanor of the  
10 first degree to a felony of the third degree.

11           ~~(10)(8)~~ The punishment imposed under this section  
12 shall run consecutive to any former sentence imposed for a  
13 conviction for any offense under s. 794.011 or s. 800.04.

14           ~~(11)(a)~~ Notwithstanding any other remedy or relief to  
15 which a person is entitled, a person suffering damage as a  
16 result of a violation of this section may bring an action to  
17 recover or obtain actual, punitive, and treble damages,  
18 equitable relief, reasonable attorney's fees, investigative  
19 costs, court costs, witness costs, deposition expenses, and  
20 any other relief a court considers proper.

21           (b) The remedies of this subsection are in addition to  
22 any other civil, administrative, or criminal remedies provided  
23 by law.

24           Section 2. This act shall take effect July 1, 2007.

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27           SENATE SUMMARY

28           Redefines certain existing terms and defines new terms  
29 related to stalking. Provides that a person who  
30 willfully, maliciously, and repeatedly follows, harasses,  
31 or cyberstalks a person 65 years of age or older commits  
the offense of aggravated stalking, a felony of the  
second degree. Provides criminal penalties. Reclassifies  
certain criminal offenses. Provides for a civil cause of  
action and remedies.