

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 946

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Computer or Electronic Device Harassment

DATE: April 12, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	<b>Fav/CS</b>
2.	Brown	Cibula	JU	<b>Favorable</b>
3.			ACJ	
4.			AP	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |  |   |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>                   | Technical amendments were recommended   |
|                              | <input type="checkbox"/>                   | Amendments were recommended             |
|                              | <input type="checkbox"/>                   | Significant amendments were recommended |

**I. Summary:**

CS/SB 946 creates a third degree felony offense for non-consensual transmission or posting of nude photographs and videos and personal identification information to websites or social networking services or other websites. The bill enhances the conduct to a second degree felony if the offender is at least 18 years old and the victim is younger than 16 years old. The bill also adds the new offense to the list of offenses for which a court must issue an order prohibiting the defendant from contacting the victim.

This bill creates section 847.0042, Florida Statutes.

The bill substantially amends section 921.0042, Florida Statutes.

**II. Present Situation:**

Publishing a nude or semi-nude photograph or video on the Internet that was originally intended to be kept private between two people has become known as “revenge porn.” This occurred recently to a young woman in Brevard County whose ex-boyfriend posted nude photographs and videos of her online along with her name, e-mail address, and city where she lived. Some victims

of such activity have been so emotionally affected that they have committed or attempted suicide.<sup>1</sup>

In many cases, the embarrassing photos or videos are posted on a website that is specifically designed to provide a forum for this activity. These websites generally do not create their own content, but allow persons to post content to the site after the person agrees to certain terms and conditions.<sup>2</sup> Section 230 of the Communications Decency Act of 1996 protects website hosts from being considered the publisher or speaker of materials posted by third parties if the material is not illegal, such as child pornography.<sup>3</sup>

A federal court of appeals recently applied the Communications Decency Act to protect Yahoo! from a lawsuit for failing to remove nude pictures and personal identification information from a personal profile page that appeared to belong to an Oregon woman. As in most cases, the false profile page had been created by the women's ex-boyfriend.<sup>4</sup>

Currently, a group is suing for damages against a revenge porn website operator in an attempt to pierce the protections provided by the Communications Decency Act.<sup>5</sup>

McAfee, an Internet security provider, recently published the results of a survey exploring the connection between romantic breakups and loss of privacy online. The survey found that 1 in 10 ex-partners have threatened to expose risqué photos online, and that these threats were carried out nearly 60 percent of the time. Men reported being threatened with exposure more than women, and also reported that a higher number of threats were carried out.<sup>6</sup>

Florida law does not specifically prohibit posting pictures of a nude adult person on the Internet for viewing by other adults if the picture was taken with the knowledge and consent of the person. Therefore, most victims in the state have no recourse. However, in some circumstances posting such pictures could be an element of the offenses of stalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Posting a picture that depicts nudity of a child may be punished as a second-degree felony or a third-degree felony under chapters 827 or 847, F.S.

Regardless of whether information is accompanied by other material, s. 817.568(4), F.S., makes it a first degree misdemeanor for a person without consent to use another person's personal identification information to harass that person.

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<sup>1</sup> WFTV News online, "9 investigates issue of nude photos posted online without consent", available at <http://www.wftv.com/news/news/local/9-investigates-issue-nude-photos-posted-online-wit/nWgdb/>.

<sup>2</sup> The website host typically derives profit from advertising revenue and, in some cases, from charging a fee to remove the offending material.

<sup>3</sup> The relevant portion of the Act states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker or any information provided by another information content provider." 47 U.S.C. 230(c)(1)

<sup>4</sup> See *Barnes v. Yahoo, Inc.*, 570 F.3d 1096 (9th Cir. USCOA 2009).

<sup>5</sup> ABC News online, "Women's Outrage after Ex-boyfriends Post Revenge Photos", available at <http://abcnews.go.com/blogs/headlines/2013/01/womens-outrage-after-ex-boyfriends-post-nude-photos/>; San Francisco Chronicle online, "Public Humiliation over Private Photos", available at <http://www.sfgate.com/opinion/article/Public-humiliation-over-private-photos-4264155.php>.

<sup>6</sup> McAfee online, "Lovers Beware: Scorned Exes may Share Intimate Data and Images Online", available at <http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx>.

### III. Effect of Proposed Changes:

The bill creates s. 847.0042, F.S., to specifically address the non-consensual transmission or posting of nude photographs and videos and personal information to websites or social networking services. Currently, such behavior may be prosecuted under s. 817.568(4), F.S., as a first degree misdemeanor for harassment by use of personal identification information. If supported by additional facts, these actions might also be prosecuted as a felony if they include the elements of crimes such as stalking (s. 784.048, F.S.), extortion (s. 836.05, F.S.), or an offense against a child under ch. 827 or 847, F.S.

Specifically, the bill prohibits a person from harassing<sup>7</sup> another person by knowingly transmitting or posting to a social networking service or any other website, or causing to be transmitted or posted to a social networking service or any other website:

- Photographs or videos that depict nudity of another person;<sup>8</sup> and
- Descriptive information that conveys the depicted person's personal identification information<sup>9</sup> that is displayed together with, or being identifiable as being connected with the photograph or video.

The bill provides that the offense is committed in Florida if any conduct that is an element of the offense is committed in this state or if harm to the depicted person occurs in the state.

The bill also adds the new offense to the list of offenses for which a court must issue a no-contact order to a defendant pursuant to s. 921.244, F.S. A no-contact order prohibits a defendant from contacting the victim of an offense.

The bill takes effect October 1, 2013.

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<sup>7</sup> As defined in the bill, "harass" means "to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose."

<sup>8</sup> The following definition of "nudity" in s. 847.001(9), F.S., will apply to the bill: "'Nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute 'nudity,' irrespective of whether or not the nipple is covered during or incidental to feeding."

<sup>9</sup> The bill incorporates the definition of personal identification information from s. 817.568(1)(f), F.S.:

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any: 1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card; 2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3. Unique electronic identification number, address, or routing code; 4. Medical records; 5. Telecommunication identifying information or access device; or, 6. Other number or information that can be used to access a person's financial resources.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill could cause loss of revenues for operators of websites that feature the types of posts that are prohibited by the bill. To the extent that this bill has a deterrent effect, would be victims may otherwise be spared emotionally and financially.

**C. Government Sector Impact:**

The Florida Department of Law Enforcement (FDLE) does not expect a fiscal impact as a result of this bill.<sup>10</sup>

The Criminal Justice Impact Conference (CJIC) has not yet estimated the impact of this bill on prison bed space requirements. However, CJIC reviewed CS/HB 787, which is similar and provides for the same new crime and penalties. The Criminal Justice Impact Conference met on April 4, 2013, and determined that the bill will have an insignificant fiscal impact on prison beds.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>10</sup> FDLE, *Senate Fiscal Note, SB 946* (March 13, 2013) (on file with the Senate Judiciary Committee).

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 18, 2013:**

- Clarifies that the personal identifying information must be that of the person whose nudity is depicted.
- Includes “harassment” as an element of the crime.
- Removes language regarding consent because harassment is inherently non-consensual.
- Eliminates specification of the method of transmitting or posting the offending information.
- Provides that the resulting post must result in identification of the person as being connected with the photo or video, eliminating the bill’s inadvertent requirement that the picture actually contain the personal identification information.
- Removes reference to fictitious or counterfeit personal identification information.
- Removes “harm to privacy interests” as part of the jurisdictional language.

**B. Amendments:**

None.