

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 Criminal Justice

BILL: CS/SB 532

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Disclosure of Sexually Explicit Images

DATE: February 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Fav/CS
2.			JU	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 532 creates a second degree misdemeanor offense for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person if the person depicted in the sexually explicit image did not consent to the disclosure.

The bill enhances the conduct to a first degree misdemeanor if the offender was 18 years of age or older and the victim was younger than 16 years of age. 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.

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.” 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.¹

¹ The website host typically derives profit from advertising revenue and, in some cases, from charging a fee to remove the offending material.

Section 230 of the Communications Decency Act of 1996 protects website hosts from being considered the publisher or speaker of material posted by third parties if the material is not illegal, such as child pornography.²

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 chs. 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.

New Jersey was the first state to respond to "revenge porn" with legislation in 2008 by making it a felony for any person to knowingly disseminate or cause the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person.³ California also passed legislation in 2013 making acts of revenge porn a misdemeanor.⁴ The National Conference of State Legislatures reports that as of January 20, 2014, there were 11 states with "revenge porn" bills pending for the 2014 Legislative Session.⁵ At least eight of those states have made it a misdemeanor crime.⁶

III. Effect of Proposed Changes:

The bill creates s. 847.0136, F.S., to specifically address the non-consensual transmission or posting of sexually explicit images to social networking services or a website, or by means of any other electronic medium. Currently, it may be possible to prosecute such behavior 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, such actions might also be prosecuted as a felony if it includes 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 chs. 827 or 847, F.S.

Specifically, the bill makes it a third degree felony for a person to intentionally and knowingly disclose to a social networking service or a website, or by means of any other electronic medium:

- A sexually explicit image⁷ of an identifiable person;⁸

² The relevant portion of the Act states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. 230(c)(1).

³ N.J. Stat. s. 2C:14-9(2008).

⁴ Cal Pen. Code s. 647.

⁵ Colorado, Florida, Hawaii, Kentucky, Maryland, Missouri, New York, Pennsylvania, Virginia, Washington, and Wisconsin.

⁶ January 24, 2014, e-mail from NCSL

⁷ "Sexually explicit image" is defined in the bill as a private photograph, film videotape, recording or other reproduction of nudity or sexual intercourse, including but not limited to, oral or anal sexual intercourse.

⁸ "Identifiable person" is defined in the bill as an individual in a sexually explicit image (image) who can be identified through visual recognition of any part of his or her body depicted in the image or identifying information as defined in

- With the intent to harass the identifiable person;
- If the person knows or should have known that identifiable person did not consent to the disclosure.

The bill enhances the conduct to a second degree felony if the offender was 18 years or older and the victim was younger than 16 years of age. The bill also provides that a violation is considered to take place in this state if any conduct that is an element of the offense or any harm to the identifiable person resulting from the offense occurs within this 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.

The bill has an effective date of October 1, 2014.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact, if any, of legislation. The CJIC has not yet reviewed this bill but it has reviewed the similar HB 475. CJIC found that HB 475 would have an insignificant prison bed impact.

s. 397.311, F.S. (name, address, social security number, fingerprints, photograph, and other similar information) which accompanies or is associated with the image.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.0042 of the Florida Statutes. This bill creates section 847.0136 of the Florida Statutes.

IX. 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 February 17, 2014:

- The CS changes the penalty from a third degree felony to second degree misdemeanor for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person.
- The CS changes the penalty from a second degree felony to a first degree misdemeanor if the offender was 18 years of age or older and the victim was younger than 16 years of age.

B. Amendments:

None.