

1 A bill to be entitled

2 An act relating to sexual cyberharassment; creating s.
3 784.049, F.S.; providing legislative findings;
4 providing definitions; prohibiting a person from
5 willfully and maliciously sexually cyberharassing
6 another person; providing penalties; authorizing a law
7 enforcement officer to arrest, without a warrant, any
8 person that he or she has probable cause to believe
9 has committed sexual cyberharassment; authorizing a
10 search warrant to be issued in specified instances;
11 providing civil remedies; providing exceptions;
12 specifying the circumstances in which a violation
13 occurs in this state; amending s. 901.15, F.S.;
14 authorizing a law enforcement officer to arrest,
15 without a warrant, any person that he or she has
16 probable cause to believe has committed sexual
17 cyberharassment; amending s. 933.18, F.S.; providing
18 an exception to the prohibition on search warrants
19 being issued to search private dwellings; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 784.049, Florida Statutes, is created
25 to read:

26 784.049 Sexual cyberharassment.—

27 (1) The Legislature finds that:

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

31 (b) It is becoming a common practice for persons to
32 publish a sexually explicit image of another to Internet
33 websites without the depicted person's consent, for no
34 legitimate purpose, with the intent of causing substantial
35 emotional distress to the depicted person.

36 (c) When such images are published on Internet websites,
37 they are able to be viewed indefinitely by persons worldwide and
38 are able to be easily reproduced and shared.

39 (d) The publication of such images on Internet websites
40 creates a permanent record of the depicted person's private
41 nudity or private sexually explicit conduct.

42 (e) The existence of such images on Internet websites
43 causes those depicted in such images significant psychological
44 harm.

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

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

48 (a) "Image" includes, but is not limited to, any
49 photograph, picture, motion picture, film, video, or
50 representation.

51 (b) "Personal identification information" has the same
52 meaning as provided in s. 817.568.

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

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

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

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

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

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

76 (5) An aggrieved person may initiate a civil action
77 against a person who violates this section to obtain all
78 appropriate relief in order to prevent or remedy a violation of

79 this section, including the following:

80 (a) Injunctive relief.

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

84 (c) Reasonable attorney fees and costs.

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

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

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

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

103 Section 2. Subsection (16) is added to section 901.15,
104 Florida Statutes, to read:

105 901.15 When arrest by officer without warrant is lawful.—A
 106 law enforcement officer may arrest a person without a warrant
 107 when:

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

111 Section 3. Subsections (9) and (10) of section 933.18,
 112 Florida Statutes, are amended, and subsection (11) is added to
 113 that section, to read:

114 933.18 When warrant may be issued for search of private
 115 dwelling.—No search warrant shall issue under this chapter or
 116 under any other law of this state to search any private dwelling
 117 occupied as such unless:

118 (9) It is being used for the unlawful sale, possession, or
 119 purchase of wildlife, saltwater products, or freshwater fish
 120 being unlawfully kept therein; ~~or~~

121 (10) The laws in relation to cruelty to animals, as
 122 provided in chapter 828, have been or are being violated
 123 therein; or

124 (11) An instrumentality or means by which sexual
 125 cyberharassment has been committed in violation of s. 784.049,
 126 or evidence relevant to proving that sexual cyberharassment has
 127 been committed in violation of s. 784.049, is contained therein.

128
 129 If, during a search pursuant to a warrant issued under this
 130 section, a child is discovered and appears to be in imminent

131 danger, the law enforcement officer conducting such search may
132 remove the child from the private dwelling and take the child
133 into protective custody pursuant to chapter 39. The term
134 "private dwelling" shall be construed to include the room or
135 rooms used and occupied, not transiently but solely as a
136 residence, in an apartment house, hotel, boardinghouse, or
137 lodginghouse. No warrant shall be issued for the search of any
138 private dwelling under any of the conditions hereinabove
139 mentioned except on sworn proof by affidavit of some creditable
140 witness that he or she has reason to believe that one of said
141 conditions exists, which affidavit shall set forth the facts on
142 which such reason for belief is based.

143 Section 4. This act shall take effect October 1, 2015.