

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Goodson offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 784.049, Florida Statutes, is created
6 to read:

7 784.049 Sexual cyberharassment.-

8 (1) The Legislature finds that:

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

12 (b) It is becoming a common practice for persons to
13 publish a sexually explicit image of another to Internet
14 websites without the depicted person's consent, for no

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15 legitimate purpose, with the intent of causing substantial
16 emotional distress to the depicted person.

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

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

23 (e) The existence of such images on Internet websites
24 causes those depicted in such images significant psychological
25 harm.

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

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

29 (a) "Image" includes, but is not limited to, any
30 photograph, picture, motion picture, film, video, or
31 representation.

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

34 (c) "Sexually cyberharass" means to publish a sexually
35 explicit image of a person that contains or conveys the personal
36 identification information of the depicted person to an Internet
37 website without the depicted person's consent, for no legitimate
38 purpose, with the intent of causing substantial emotional
39 distress to the depicted person.

40 (d) "Sexually explicit image" means any image depicting

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41 nudity, as defined in s. 847.001, or depicting a person engaging
42 in sexual conduct, as defined in s. 847.001.

43 (3) (a) Except as provided in paragraph (b), a person who
44 willfully and maliciously sexually cyberharasses another person
45 commits a misdemeanor of the first degree, punishable as
46 provided in s. 775.082 or s. 775.083.

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

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

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

57 (5) An aggrieved person may initiate a civil action
58 against a person who violates this section to obtain all
59 appropriate relief in order to prevent or remedy a violation of
60 this section, including the following:

61 (a) Injunctive relief.

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

65 (c) Reasonable attorney fees and costs.

66 (6) The criminal and civil penalties of this section do

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67 not apply to:

68 (a) A provider of an interactive computer service as
69 defined in 47 U.S.C. s. 230(f), information service as defined
70 in 47 U.S.C. s. 153, or communications service as defined in s.
71 202.11, that provides the transmission, storage, or caching of
72 electronic communications or messages of others; other related
73 telecommunications or commercial mobile radio service; or
74 content provided by another person; or

75 (b) A law enforcement officer, as defined in s. 943.10, or
76 any local, state, federal, or military law enforcement agency,
77 that publishes a sexually explicit image in connection with the
78 performance of his or her duties as a law enforcement officer,
79 or law enforcement agency.

80 (7) A violation of this section is committed within this
81 state if any conduct that is an element of the offense, or any
82 harm to the depicted person resulting from the offense, occurs
83 within this state.

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

86 901.15 When arrest by officer without warrant is lawful.—A
87 law enforcement officer may arrest a person without a warrant
88 when:

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

92 Section 3. Subsections (9) and (10) of section 933.18,

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93 Florida Statutes, are amended, and subsection (11) is added to
94 that section, to read:

95 933.18 When warrant may be issued for search of private
96 dwelling.—No search warrant shall issue under this chapter or
97 under any other law of this state to search any private dwelling
98 occupied as such unless:

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

102 (10) The laws in relation to cruelty to animals, as
103 provided in chapter 828, have been or are being violated
104 therein; or

105 (11) An instrumentality or means by which sexual
106 cyberharassment has been committed in violation of s. 784.049,
107 or evidence relevant to proving that sexual cyberharassment has
108 been committed in violation of s. 784.049, is contained therein.

109
110 If, during a search pursuant to a warrant issued under this
111 section, a child is discovered and appears to be in imminent
112 danger, the law enforcement officer conducting such search may
113 remove the child from the private dwelling and take the child
114 into protective custody pursuant to chapter 39. The term
115 "private dwelling" shall be construed to include the room or
116 rooms used and occupied, not transiently but solely as a
117 residence, in an apartment house, hotel, boardinghouse, or
118 lodginghouse. No warrant shall be issued for the search of any

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119 private dwelling under any of the conditions hereinabove
120 mentioned except on sworn proof by affidavit of some creditable
121 witness that he or she has reason to believe that one of said
122 conditions exists, which affidavit shall set forth the facts on
123 which such reason for belief is based.

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

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T I T L E A M E N D M E N T

127
128 Remove everything before the enacting clause and insert:

129 A bill to be entitled

130 An act relating to sexual cyberharassment; creating s.

131 784.049, F.S.; providing legislative findings;

132 providing definitions; prohibiting a person from

133 willfully and maliciously sexually cyberharassing

134 another person; providing penalties; authorizing a law

135 enforcement officer to arrest, without a warrant, any

136 person that he or she has probable cause to believe

137 has committed sexual cyberharassment; authorizing a

138 search warrant to be issued in specified instances;

139 providing civil remedies; providing exceptions;

140 specifying the circumstances in which a violation

141 occurs in this state; amending s. 901.15, F.S.;

142 authorizing a law enforcement officer to arrest,

143 without a warrant, any person that he or she has

144 probable cause to believe has committed sexual

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145 | cyberharassment; amending s. 933.18, F.S.; providing
146 | an exception to the prohibition on search warrants
147 | being issued to search private dwellings; providing an
148 | effective date.

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