

By the Committee on Criminal Justice; and Senator Simmons

591-03139-15

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1                   A bill to be entitled  
2       An act relating to the disclosure of sexually explicit  
3       images; creating s. 847.0136, F.S.; providing  
4       definitions; prohibiting an individual from  
5       electronically disclosing a sexually explicit image of  
6       an identifiable person with the intent to harass such  
7       person if the individual knows or should have known  
8       that such person did not consent to the disclosure;  
9       providing criminal penalties; providing for  
10      jurisdiction; providing exceptions; exempting  
11      providers of specified services; amending s. 921.244,  
12      F.S.; requiring a court to order that a person  
13      convicted of such offense be prohibited from having  
14      contact with the victim; providing criminal penalties  
15      for a violation of such order; providing that criminal  
16      penalties for certain offenses run consecutively with  
17      a sentence imposed for a violation of s. 847.0136,  
18      F.S.; reenacting s. 784.048(7), F.S., to incorporate  
19      the amendment made to s. 921.244, F.S., in a reference  
20      thereto; providing an effective date.

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

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24       Section 1. Section 847.0136, Florida Statutes, is created  
25 to read:

26       847.0136 Prohibited electronic disclosure of sexually  
27 explicit images; penalties; jurisdiction.-

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

29       (a) "Disclose" means to publish, post, distribute, exhibit,

591-03139-15

2015538c1

30 advertise, offer, or transfer, or cause to be published, posted,  
31 distributed, exhibited, advertised, offered, or transferred.

32 (b) "Harass" means to engage in conduct directed at a  
33 specific person which causes substantial emotional distress to  
34 that person and serves no legitimate purpose.

35 (c) "Identifiable person" means an individual in a sexually  
36 explicit image who can be identified through:

37 1. Recognition of his or her face as depicted in the  
38 sexually explicit image; or

39 2. Personal identification information that accompanies or  
40 is associated with the sexually explicit image.

41 (d) "Personal identification information" has the same  
42 meaning as provided in s. 817.568.

43 (e) "Sexually explicit image" means a private photograph,  
44 film, videotape, recording, or other reproduction of:

45 1. Nudity; or

46 2. Sexual intercourse, including, but not limited to, oral  
47 sexual intercourse or anal sexual intercourse.

48 (2) An individual may not intentionally and knowingly  
49 disclose a sexually explicit image of an identifiable person or  
50 that contains descriptive information in a form that conveys the  
51 personal identification information of the person to a social  
52 networking service or a website, or by means of any other  
53 electronic medium, with the intent to harass such person, if the  
54 individual knows or should have known that the person depicted  
55 in the sexually explicit image did not consent to such  
56 disclosure.

57 (3) (a) Except as provided in paragraph (b), an individual  
58 who violates this section commits a 2nd degree misdemeanor,

591-03139-15

2015538c1

59 punishable as provided in s. 775.082 or s. 775.083.

60 (b) An individual who is 18 years of age or older at the  
61 time he or she violates this section commits a 1st degree  
62 misdemeanor, punishable as provided in s. 775.082 or s. 775.083,  
63 if the violation involves a sexually explicit image of an  
64 individual who was younger than 16 years of age at the time the  
65 sexually explicit image was created.

66 (4) A violation of this section is committed within this  
67 state if any conduct that is an element of the offense described  
68 in subsection (2), or any harm to the identifiable person  
69 resulting from the offense described in subsection (2), occurs  
70 within this state.

71 (5) This section does not apply to the disclosure of a  
72 sexually explicit image for:

73 (a) The reporting, investigation, and prosecution of an  
74 alleged crime for law enforcement purposes.

75 (b) Voluntary and consensual purposes in public or  
76 commercial settings.

77 (6) This section does not impose liability on a provider of  
78 an interactive computer service as defined in 47 U.S.C. s.  
79 230(f), an information service as defined in 47 U.S.C. s. 153,  
80 or communications services as defined in s. 202.11, for:

81 (a) The transmission, storage, or caching of electronic  
82 communications or messages of other persons;

83 (b) Other related telecommunications or commercial mobile  
84 radio service; or

85 (c) Content provided by another person.

86 Section 2. Section 921.244, Florida Statutes, is amended to  
87 read:

591-03139-15

2015538c1

88 921.244 Order of no contact; penalties.—

89 (1) At the time of sentencing an offender convicted of a  
90 violation of s. 794.011, s. 800.04, s. 847.0135(5), s. 847.0136,  
91 or any offense in s. 775.084(1)(b)1.a.-o., the court shall order  
92 that the offender be prohibited from having any contact with the  
93 victim, directly or indirectly, including through a third  
94 person, for the duration of the sentence imposed. The court may  
95 reconsider the order upon the request of the victim if the  
96 request is made at any time after the victim has attained 18  
97 years of age. In considering the request, the court shall  
98 conduct an evidentiary hearing to determine whether a change of  
99 circumstances has occurred which warrants a change in the court  
100 order prohibiting contact and whether it is in the best interest  
101 of the victim that the court order be modified or rescinded.

102 (2) An ~~Any~~ offender who violates a court order issued under  
103 this section commits a felony of the third degree, punishable as  
104 provided in s. 775.082, s. 775.083, or s. 775.084.

105 (3) The punishment imposed under this section shall run  
106 consecutive to any former sentence imposed for a conviction for  
107 any offense under s. 794.011, s. 800.04, s. 847.0135(5), s.  
108 847.0136, or any offense in s. 775.084(1)(b)1.a.-o.

109 Section 3. Subsection (7) of s. 784.048, Florida Statutes,  
110 is reenacted for the purpose of incorporating the amendment made  
111 by this act to s. 921.244, Florida Statutes, in a reference  
112 thereto.

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