

By the Committees on Rules; and Criminal Justice; and Senator
Simmons

595-03793-15

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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; providing civil
11 remedies; exempting providers of specified services;
12 amending s. 921.244, F.S.; requiring a court to order
13 that a person convicted of such offense be prohibited
14 from having contact with the victim; providing
15 criminal penalties for a violation of such order;
16 providing that criminal penalties for certain offenses
17 run consecutively with a sentence imposed for a
18 violation of s. 847.0136, F.S.; reenacting s.
19 784.048(7), F.S., to incorporate the amendment made to
20 s. 921.244, F.S., in a reference thereto; providing an
21 effective date.

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

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

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

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

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30 (a) "Disclose" means to publish, post, distribute, exhibit,
31 advertise, offer, or transfer, or cause to be published, posted,
32 distributed, exhibited, advertised, offered, or transferred.

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

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

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

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

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

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

46 1. Nudity; or

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

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

58 (3) (a) Except as provided in paragraph (b), an individual

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59 who violates this section commits a misdemeanor of the first
60 degree, punishable as provided in s. 775.082 or s. 775.083.

61 (b) An individual who commits a second or subsequent
62 violation under this section commits a felony of the third
63 degree punishable as provided in s. 775.082, s.775.083, or
64 s.775.084.

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

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

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

74 (b) Voluntary and consensual purposes that, from all facts
75 and circumstances, were not intended to be nor remain
76 confidential, including in public or commercial settings.

77 (6) An aggrieved person may initiate a civil action against
78 a person who violates this section to obtain all appropriate
79 relief in order to prevent or remedy a violation of this
80 section, including:

81 (a) Injunctive relief.

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

85 (c) Reasonable attorney fees and costs.

86 (7) This section does not impose liability on a provider of
87 an interactive computer service as defined in 47 U.S.C. s.

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88 230(f), an information service as defined in 47 U.S.C. s. 153,
89 or communications services as defined in s. 202.11, for:

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

92 (b) Other related telecommunications or commercial mobile
93 radio service; or

94 (c) Content provided by another person.

95 Section 2. Section 921.244, Florida Statutes, is amended to
96 read:

97 921.244 Order of no contact; penalties.—

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

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

114 (3) The punishment imposed under this section shall run
115 consecutive to any former sentence imposed for a conviction for
116 any offense under s. 794.011, s. 800.04, s. 847.0135(5), s.

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117 847.0136, or any offense in s. 775.084(1)(b)1.a.-o.

118 Section 3. For the purpose of incorporating the amendment
119 made by this act to section 921.244, Florida Statutes, in a
120 reference thereto, subsection (7) of section 784.048, Florida
121 Statutes, is reenacted to read:

122 784.048 Stalking; definitions; penalties.—

123 (7) A person who, after having been sentenced for a
124 violation of s. 794.011, s. 800.04, or s. 847.0135(5) and
125 prohibited from contacting the victim of the offense under s.
126 921.244, willfully, maliciously, and repeatedly follows,
127 harasses, or cyberstalks the victim commits the offense of
128 aggravated stalking, a felony of the third degree, punishable as
129 provided in s. 775.082, s. 775.083, or s. 775.084.

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