

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 Rules

BILL: SB 1136

INTRODUCER: Senators Harrell and Perry

SUBJECT: Cyberharassment

DATE: April 16, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 1136 amends s. 784.049, F.S., which prohibits and punishes sexual cyberharassment. Currently, this section prohibits willfully and maliciously publishing a sexually explicit image of another person which contains or conveys the personal identification information of the depicted person *to an Internet website* without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The bill expands the definition to prohibit dissemination *via electronic means to another person*, in addition to publishing an image on an Internet website in the manner described.

The bill also amends current legislative findings in s. 784.049, F.S., to indicate that sexual cyberharassment includes dissemination of such sexually explicit images of another person via electronic means in the manner described, makes conforming changes to the definition of the term “sexually cyberharass,” and defines “personal identification information.”

The Department of Corrections estimates that this bill will have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Section 784.049, F.S., prohibits and punishes sexual cyberharassment. The term “sexually cyberharass” means to publish a sexually explicit image¹ of a person that contains or conveys the personal identification information² of the depicted person to an Internet website without the

¹ “Sexually explicit image” means any image depicting nudity or depicting any person engaging in sexual conduct. Section 784.049(2)(d), F.S.

² Section 784.049(2)(b), F.S., defines “personal identification information” by reference to the definition of that term in s. 817.568, F.S. Section 817.568(1)(f), F.S., defines “personal identification information” as any name or number that may be

depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.³

A person who willfully and maliciously sexually cyberharasses another person generally commits a first degree misdemeanor.⁴ However, a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony.⁵

Further, an aggrieved person may initiate a civil action against a person who violates s. 784.049, F.S., to obtain all appropriate relief in order to prevent or remedy a violation of this section, including:

- Injunctive relief;
- Monetary damages to include \$5,000 or actual damages incurred as a result of a violation of this section, whichever is greater; and
- Reasonable attorney fees and costs.⁶

The criminal and civil penalties of this section do not apply to:

- A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined in 47 U.S.C. s. 153, or communications service as defined in s. 202.11, F.S., that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or
- A law enforcement officer, as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.⁷

III. Effect of Proposed Changes:

The bill amends s. 784.049, F.S., which prohibits and punishes sexual cyberharassment. Currently, this section prohibits willfully and maliciously publishing a sexually explicit image of another person which contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The bill provides that sexual cyberharassment also includes the willful and malicious dissemination of such images via electronic means in the manner described.

used, alone or in conjunction with any other information, to identify a specific person, and includes an extensive list of specific information such as name, postal or electronic mail address, telephone number, social security number, date of birth, driver license or identification number, bank account number, and credit or debit card number.

³ Section 784.049(2)(c), F.S.

⁴ Section 784.049(3)(a), F.S.

⁵ Section 784.049(3)(b), F.S.

⁶ Section 784.049(5), F.S.

⁷ Section 784.049(6), F.S.

A sexual cyberharassment violation is generally a first degree misdemeanor, which is punishable by up to one year in county jail and a fine of up to \$1,000.⁸ However, a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony, which is punishable by up to five years in state prison and a fine of up to \$5,000.⁹

An aggrieved person may initiate a civil action against a person who violates s. 784.049, F.S., to obtain all appropriate relief.¹⁰

The bill amends current legislative findings in s. 784.049, F.S., to indicate that sexual cyberharassment includes dissemination of such sexual images of another person via electronic means in the manner described.

The bill amends the definition of “sexually cyberharass.” As amended, “sexually cyberharass” means to publish on an Internet website or to disseminate via electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

Currently, “personal identification information” is defined by reference to a definition of that term in s. 817.568, F.S. The bill defines “personal identification information” as any information that identifies an individual, including, but not limited to, a name, a postal or an e-mail address, a telephone number, a social security number, a date of birth, or any unique physical representation.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁸ Sections 775.082 and 775.083, F.S.

⁹ Sections 775.082 and 775.083, F.S.

¹⁰ See “Present Situation” section of this analysis for a detailed description of some of the available relief.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections' legislative analysis states that the Department, in the last 3 years, has recorded two probation admissions and no prison admissions related to this offense. The Department estimates that this crime will increase the number of violations, but the number is not known, therefore, the impact of the bill is indeterminate.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 784.049 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 901.15, 901.41, and 933.18.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹¹ Department of Corrections, *2019 Agency Legislative Bill Analysis* (March 11, 2019), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=28443>.