

CHAPTER 2019-53

Senate Bill No. 1136

An act relating to cyberharassment; amending s. 784.049, F.S.; revising legislative intent; redefining the terms “personal identifying information” and “sexually cyberharass”; requiring that a person have a reasonable expectation of privacy in an image for the publication or dissemination of the image to qualify as sexual cyberharassment; providing that certain actions do not eliminate such an expectation of privacy; providing criminal penalties; reenacting ss. 901.15(16), 901.41(5), and 933.18(11), F.S., relating to lawful arrests by officers without a warrant, prearrest diversion programs, and when a warrant may be issued for the search of a private dwelling, respectively, to incorporate the amendment made to s. 784.049, F.S., in references thereto; providing an effective date.

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

Section 1. Section 784.049, Florida Statutes, is amended to read:

784.049 Sexual cyberharassment.—

(1) The Legislature finds that:

(a) A person depicted in a sexually explicit image taken with the person’s consent may retain has a reasonable expectation that the image will remain private despite sharing the image with another person, such as an intimate partner.

(b) It is becoming a common practice for persons to publish a sexually explicit image of another to Internet websites or to disseminate such an image through electronic means without the depicted person’s consent, contrary to the depicted person’s reasonable expectation of privacy, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

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

(d) The publication or dissemination of such images through the use of ~~on~~ Internet websites or electronic means creates a permanent record of the depicted person’s private nudity or private sexually explicit conduct.

(e) The existence of such images on Internet websites or the dissemination of such images without the consent of all parties depicted in the images causes those depicted in such images significant psychological harm.

(f) Safeguarding the psychological well-being and privacy interests of persons depicted in such images is compelling.

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

(a) “Image” includes, but is not limited to, any photograph, picture, motion picture, film, video, or representation.

(b) “Personal identification information” means any information that identifies an individual, and includes, but is not limited to, any name, postal or electronic mail address, telephone number, social security number, date of birth, or any unique physical representation has the same meaning as provided in s. 817.568.

(c) “Sexually cyberharass” means to publish to an Internet website or disseminate through electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person’s consent, contrary to the depicted person’s reasonable expectation that the image would remain private, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. Evidence that the depicted person sent a sexually explicit image to another person does not, on its own, remove his or her reasonable expectation of privacy for that image.

(d) “Sexually explicit image” means any image depicting nudity, as defined in s. 847.001, or depicting a person engaging in sexual conduct, as defined in s. 847.001.

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

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

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

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

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

(a) Injunctive relief.

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

(c) Reasonable attorney fees and costs.

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

(a) 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, 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

(b) A law enforcement officer, as defined in s. 943.10, 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) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within this state.

Section 2. For the purpose of incorporating the amendment made by this act to section 784.049, Florida Statutes, in a reference thereto, subsection (16) of section 901.15, Florida Statutes, is reenacted to read:

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

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

Section 3. For the purpose of incorporating the amendment made by this act to section 784.049, Florida Statutes, in a reference thereto, subsection (5) of section 901.41, Florida Statutes, is reenacted to read:

901.41 Prearrest diversion programs.—

(5) ELIGIBILITY.—A violent misdemeanor, a misdemeanor crime of domestic violence, as defined in s. 741.28, or a misdemeanor under s. 741.29, s. 741.31, s. 784.046, s. 784.047, s. 784.048, s. 784.0487, or s. 784.049 does not qualify for a civil citation or prearrest diversion program.

Section 4. For the purpose of incorporating the amendment made by this act to section 784.049, Florida Statutes, in a reference thereto, subsection (11) of section 933.18, Florida Statutes, is reenacted to read:

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

(11) An instrumentality or means by which sexual cyberharassment has been committed in violation of s. 784.049, or evidence relevant to proving

that sexual cyberharassment has been committed in violation of s. 784.049, is contained therein.

If, during a search pursuant to a warrant issued under this section, a child is discovered and appears to be in imminent danger, the law enforcement officer conducting such search may remove the child from the private dwelling and take the child into protective custody pursuant to chapter 39. The term “private dwelling” shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodginghouse. No warrant shall be issued for the search of any private dwelling under any of the conditions hereinabove mentioned except on sworn proof by affidavit of some creditable witness that he or she has reason to believe that one of said conditions exists, which affidavit shall set forth the facts on which such reason for belief is based.

Section 5. This act shall take effect July 1, 2019.

Approved by the Governor May 23, 2019.

Filed in Office Secretary of State May 23, 2019.