

## CHAPTER 2015-24

### Committee Substitute for Committee Substitute for Senate Bill No. 538

An act relating to sexual cyberharassment; creating s. 784.049, F.S.; providing legislative findings; providing definitions; prohibiting a person from willfully and maliciously sexually cyberharassing another person; providing penalties; authorizing a law enforcement officer to arrest, without a warrant, any person that he or she has probable cause to believe has committed sexual cyberharassment; authorizing a search warrant to be issued in specified instances; providing civil remedies; providing exceptions; specifying the circumstances in which a violation occurs in this state; amending s. 901.15, F.S.; authorizing a law enforcement officer to arrest, without a warrant, any person that he or she has probable cause to believe has committed sexual cyberharassment; amending s. 933.18, F.S.; providing an exception to the prohibition on search warrants being issued to search private dwellings; providing an effective date.

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

Section 1. Section 784.049, Florida Statutes, is created 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 has a reasonable expectation that the image will remain private.

(b) It is becoming a common practice for persons to publish a sexually explicit image of another to Internet websites without the depicted person's consent, 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, they are able to be viewed indefinitely by persons worldwide and are able to be easily reproduced and shared.

(d) The publication of such images on Internet websites 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 causes those depicted in such images significant psychological harm.

(f) Safeguarding the psychological well-being 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” has the same meaning as provided in s. 817.568.

(c) “Sexually cyberharass” means to publish 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, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

(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. Subsection (16) is added to section 901.15, Florida Statutes, 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. Subsections (9) and (10) of section 933.18, Florida Statutes, are amended, and subsection (11) is added to that section, 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:

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

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

(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 4. This act shall take effect October 1, 2015.

Approved by the Governor May 14, 2015.

Filed in Office Secretary of State May 14, 2015.