

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/HB 151	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Criminal Justice Subcommittee; Goodson and others	114 Y's	2 N's
COMPANION BILLS:	CS/CS/SB 538	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/HB 151 passed the House on April 24, 2015, as CS/CS/SB 538 as amended. The Senate concurred in the House amendment to the Senate Bill and subsequently passed the bill as amended on April 29, 2015.

Florida law does not currently prohibit a person from posting on the Internet nude photos of adults that were taken consensually.

The bill creates s. 784.049, F.S., to prohibit a person from willfully and maliciously sexually cyberharassing another person. "Sexually cyberharass" is defined as publishing a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without such person's consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to such person.

A person who commits sexual cyberharassment commits a first degree misdemeanor. However, a second or subsequent violation by a person with a prior conviction for sexual cyberharassment is a third degree felony.

The bill amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has committed sexual cyberharassment. Additionally, the bill permits a search warrant to be issued for a private dwelling if evidence relevant to proving sexual cyberharassment is contained therein.

The bill also authorizes an aggrieved person to initiate a civil action against a person who commits sexual cyberharassment to obtain all appropriate relief in order to prevent or remedy a violation. This relief includes injunctive relief; monetary damages to include five thousand dollars or actual damages incurred, whichever is greater; and reasonable attorney fees and costs.

The bill specifies that sexual cyberharassment is committed in Florida if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within the state.

The Criminal Justice Impact Conference met on March 11, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., and increase of 10 or fewer beds). The bill may also have a positive jail bed impact (i.e., it may increase the need for jail beds).

Subject to the Governor's veto powers, the bill is effective October 1, 2015.

I. SUBSTANTIVE INFORMATION

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0151z.CRJS

DATE: May 5, 2015

A. EFFECT OF CHANGES:

Current Situation

Internet security company McAfee recently published the results of a survey conducted in 2012, which explored the connection between romantic breakups and the loss of privacy online.¹ Among other results, the survey found that one in ten ex-partners have threatened to expose risqué photos online, and that these threats were carried out nearly 60 percent of the time.² Men reported being threatened with such exposure more often than women.³

In 2004, New Jersey⁴ passed a law prohibiting unlicensed distribution of sexually explicit photos online, and California followed suit in 2013.⁵ Since then, a number of other states have enacted similar legislation.⁶ However, because such statutes restrict speech, they raise constitutional concerns. In September 2014, a lawsuit was filed challenging the constitutionality of one such law passed in Arizona, but no ruling has yet been issued.⁷

Florida law does not currently prohibit a person from posting on the Internet nude photos of adults that were taken consensually. However, in some circumstances, posting such pictures could be an element of stalking or cyberstalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Additionally, s. 817.568(4), F.S., makes the non-consensual use of a person's personal identification information a first degree misdemeanor⁸ if used to harass⁹ that person. "Personal identification information" is defined as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.¹⁰

Effect of the Bill

The bill provides the following legislative findings:

- The Legislature finds that a person depicted in a sexually explicit image that was taken with such person's consent has a reasonable expectation that such image will remain private.

¹ McAfee, Inc., *Lovers Beware: Scorned Exes May Share Intimate Data and Images Online*, MCAFEE.COM (Feb. 4, 2013), <http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx>. (last visited April 29, 2015).

² *Id.*

³ *Id.*

⁴ N.J. Stat. § 2C:14-9 (2004).

⁵ Cal. Penal Code § 647 (2013).

⁶ See, e.g., Ariz. Rev. Stat. §13-1425 (Arizona); CRSA §18-7-107 (Colorado); Ga. Code Ann. §16-11-90 (Georgia); Haw. Rev. Stat. §711-1110.9 (Hawaii); Idaho Code Ann. §18-66009 (Idaho).

⁷ *Antigone Books, L.L.C. v. Horne*, 2014 WL 4784248 (D. Ariz. filed Sept. 23, 2014).

⁸ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁹ Section 817.568, F.S., defines "harass" as engaging in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose.

¹⁰ s. 817.568(1)(f), F.S.

- The Legislature finds that 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, and with the intent to cause substantial emotional distress to the depicted person.
- The Legislature finds that when such images are published on Internet websites, they are able to be viewed indefinitely and by persons worldwide, and are able to be easily reproduced and shared.
- The Legislature finds that the publication of such images on Internet websites creates a permanent record of the depicted person's private nudity or private sexually explicit conduct.
- The Legislature finds that the existence of such images on Internet websites causes those depicted in such images significant psychological harm.
- The Legislature further finds that safeguarding the psychological well-being of persons depicted in such images is compelling.

The bill creates s. 784.049, F.S., to prohibit a person from willfully and maliciously sexually cyberharassing another person. "Sexually cyberharass" is defined as publishing a sexually explicit image¹¹ of a person that contains or conveys the personal identification information¹² of the depicted person to an Internet website without such person's consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to such person.

A person who commits sexual cyberharassment commits a first degree misdemeanor. However, a second or subsequent violation by a person with a prior conviction for sexual cyberharassment is a third degree felony.¹³

The bill amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has committed sexual cyberharassment. Additionally, the bill permits a search warrant to be issued for a private dwelling if an instrumentality or means by which a violation of s. 784.049, F.S., has been committed, is contained therein, or if evidence relevant to proving sexual cyberharassment is contained therein.

The bill authorizes an aggrieved person to initiate a civil action against a person who commits sexual cyberharassment to obtain all appropriate relief in order to prevent or remedy a violation. This relief includes:

- Injunctive relief;
- Monetary damages to include five thousand dollars or actual damages incurred, whichever is greater; and
- Reasonable attorney fees and costs.

The bill exempts the following from the above-described criminal penalties and civil remedies:

- A provider of an interactive computer service as defined in 47 U.S.C. § 230(f), information service as defined in 47 U.S.C. § 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.

¹¹ The bill defines "sexually explicit image" to mean any image depicting nudity, as defined in s. 847.001, F.S., or depicting a person engaging in sexual conduct, as defined in s. 847.001, F.S. "Image" includes but is not limited to, any photograph, picture, motion picture, film, video, or representation.

¹² The bill defines "personal identifying information" in accordance with s. 817.568, F.S.

¹³ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

The bill specifies that sexual cyberharassment is considered to be committed in Florida if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within the state.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on March 11, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill may have a positive jail bed impact on local governments because it creates a new first degree misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private individuals or companies who engage in the behavior prohibited by the bill may be subject to civil action for doing so.

D. FISCAL COMMENTS:

None.