

1 A bill to be entitled
 2 An act relating to sexual cyberharassment; creating s.
 3 784.049, F.S.; providing legislative findings;
 4 providing definitions; prohibiting a person from
 5 willfully and maliciously sexually cyberharassing
 6 another person; providing penalties; authorizing a law
 7 enforcement officer to arrest, without a warrant, any
 8 person that he or she has probable cause to believe
 9 has committed sexual cyberharassment; authorizing a
 10 search warrant to be issued in specified instances;
 11 providing civil remedies; providing exceptions;
 12 specifying the circumstances in which a violation
 13 occurs in this state; amending s. 901.15, F.S.;
 14 authorizing a law enforcement officer to arrest,
 15 without a warrant, any person that he or she has
 16 probable cause to believe has committed sexual
 17 cyberharassment; amending s. 933.18, F.S.; providing
 18 an additional exception to the prohibition on search
 19 warrants being issued to search private dwellings;
 20 providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

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 24 Section 1. Section 784.049, Florida Statutes, is created
 25 to read:

26 784.049 Sexual cyberharassment.--

27 (1) (a) The Legislature finds that a person depicted in a
 28 sexually explicit image that was taken with such person's
 29 consent has a reasonable expectation that such image will remain
 30 private.

31 (b) The Legislature finds that it is becoming a common
 32 practice for persons to publish a sexually explicit image of
 33 another to Internet websites without the depicted person's
 34 consent, for no legitimate purpose, and with the intent to cause
 35 substantial emotional distress to the depicted person.

36 (c) The Legislature finds that when such images are
 37 published on Internet websites, they are able to be viewed
 38 indefinitely and by persons worldwide, and are able to be easily
 39 reproduced and shared.

40 (d) The Legislature finds that the publication of such
 41 images on Internet websites creates a permanent record of the
 42 depicted person's private nudity or private sexually explicit
 43 conduct.

44 (e) The Legislature finds that the existence of such
 45 images on Internet websites causes those depicted in such images
 46 significant psychological harm.

47 (f) The Legislature further finds that safeguarding the
 48 psychological well-being of persons depicted in such images is
 49 compelling.

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

51 (a) "Image," includes but is not limited to, any
 52 photograph, picture, motion picture, film, video, or

53 representation.

54 (b) "Personal identifying information" has the same
55 meaning as provided in s. 817.568.

56 (c) "Sexually cyberharass" means to publish a sexually
57 explicit image of a person that contains or conveys the personal
58 identification information of the depicted person to an Internet
59 website without such person's consent, for no legitimate
60 purpose, and with the intent to cause substantial emotional
61 distress to such person.

62 (d) "Sexually explicit image" means any image depicting
63 nudity, as defined in s. 847.001, or depicting a person engaging
64 in sexual conduct, as defined in s. 847.001.

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

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

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

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

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

83 (a) Injunctive relief.

84 (b) Monetary damages to include five thousand dollars or
 85 actual damages incurred as a result of a violation of this
 86 section, whichever is greater.

87 (c) Reasonable attorney fees and costs.

88 (6) The criminal and civil penalties in this section do
 89 not apply to:

90 (a) A provider of an interactive computer service as
 91 defined in 47 U.S.C. s. 230(f), information service as defined
 92 in 47 U.S.C. s. 153, or communications service as defined in s.
 93 202.11, that provides the transmission, storage, or caching of
 94 electronic communications or messages of others; other related
 95 telecommunications or commercial mobile radio service; or
 96 content provided by another person; or

97 (b) A law enforcement officer as defined in s. 943.10, or
 98 any local, state, federal, or military law enforcement agency,
 99 that publishes a sexually explicit image in connection with the
 100 performance of his or her duties as a law enforcement officer,
 101 or law enforcement agency.

102 (7) A violation of this section is committed within this
 103 state if any conduct that is an element of the offense, or any
 104 harm to the depicted person resulting from the offense, occurs

105 within this state.

106 Section 2. Subsection (16) is added to section 901.15,
107 Florida Statutes, to read:

108 901.15 When arrest by officer without warrant is lawful.—A
109 law enforcement officer may arrest a person without a warrant
110 when:

111 (16) There is probable cause to believe that the person
112 has committed a criminal act according to s. 784.049.

113 Section 3. Subsections (9) and (10) of section 933.18,
114 Florida Statutes, are amended and subsection (11) is added to
115 that section, to read:

116 933.18 When warrant may be issued for search of private
117 dwelling.—No search warrant shall issue under this chapter or
118 under any other law of this state to search any private dwelling
119 occupied as such unless:

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

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

126 (11) An instrumentality or means by which a violation of s.
127 784.049 has been committed, or evidence relevant to proving a
128 violation of s. 784.049 has been committed, is contained
129 therein.

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

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