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1 A bill to be entitled
2 An act relating to cyberharassment; amending s.
3 784.049, F.S.; revising legislative intent; redefining
4 the terms "personal identifying information" and
5 "sexually cyberharass"; requiring that a person have a
6 reasonable expectation of privacy in an image for the
7 publication or dissemination of the image to qualify
8 as sexual cyberharassment; providing that certain
9 actions do not eliminate such an expectation of
10 privacy; providing criminal penalties; reenacting ss.
11 901.15(16), 901.41(5), and 933.18(11), F.S., relating
12 to lawful arrests by officers without a warrant,
13 prearrest diversion programs, and when a warrant may
14 be issued for the search of a private dwelling,
15 respectively, to incorporate the amendment made to s.
16 784.049, F.S., in references thereto; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 784.049, Florida Statutes, is amended to
22 read:

23 784.049 Sexual cyberharassment.—

24 (1) The Legislature finds that:

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

29 (b) It is becoming a common practice for persons to publish

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30 a sexually explicit image of another to Internet websites or to
31 disseminate such an image through electronic means without the
32 depicted person's consent, contrary to the depicted person's
33 reasonable expectation of privacy, for no legitimate purpose,
34 with the intent of causing substantial emotional distress to the
35 depicted person.

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

39 (d) The publication or dissemination of such images through
40 the use of ~~an~~ Internet websites or electronic means creates a
41 permanent record of the depicted person's private nudity or
42 private sexually explicit conduct.

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

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

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

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

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

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59 (c) "Sexually cyberharass" means to publish to an Internet
60 website or disseminate through electronic means to another
61 person a sexually explicit image of a person that contains or
62 conveys the personal identification information of the depicted
63 person ~~to an Internet website~~ without the depicted person's
64 consent, contrary to the depicted person's reasonable
65 expectation that the image would remain private, for no
66 legitimate purpose, with the intent of causing substantial
67 emotional distress to the depicted person. Evidence that the
68 depicted person sent a sexually explicit image to another person
69 does not, on its own, remove his or her reasonable expectation
70 of privacy for that image.

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

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

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

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

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

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

92 (a) Injunctive relief.

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

96 (c) Reasonable attorney fees and costs.

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

99 (a) A provider of an interactive computer service as
100 defined in 47 U.S.C. s. 230(f), information service as defined
101 in 47 U.S.C. s. 153, or communications service as defined in s.
102 202.11, that provides the transmission, storage, or caching of
103 electronic communications or messages of others; other related
104 telecommunications or commercial mobile radio service; or
105 content provided by another person; or

106 (b) A law enforcement officer, as defined in s. 943.10, or
107 any local, state, federal, or military law enforcement agency,
108 that publishes a sexually explicit image in connection with the
109 performance of his or her duties as a law enforcement officer,
110 or law enforcement agency.

111 (7) A violation of this section is committed within this
112 state if any conduct that is an element of the offense, or any
113 harm to the depicted person resulting from the offense, occurs
114 within this state.

115 Section 2. For the purpose of incorporating the amendment
116 made by this act to section 784.049, Florida Statutes, in a

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117 reference thereto, subsection (16) of section 901.15, Florida
118 Statutes, is reenacted to read:

119 901.15 When arrest by officer without warrant is lawful.—A
120 law enforcement officer may arrest a person without a warrant
121 when:

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

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

129 901.41 Prearrest diversion programs.—

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

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

139 933.18 When warrant may be issued for search of private
140 dwelling.—No search warrant shall issue under this chapter or
141 under any other law of this state to search any private dwelling
142 occupied as such unless:

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

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146 been committed in violation of s. 784.049, is contained therein.

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

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