

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Section 784.048, F.S., prohibits stalking. The section provides that any person who willfully, maliciously and repeatedly follows or harasses another person commits the offense of stalking, a first degree misdemeanor. The term “harass” is defined to mean engaging in a course of conduct¹ directed at a specific person that causes substantial emotional distress² and serves no legitimate purpose.³

Aggravated stalking is a third degree felony and occurs when any person stalks another person and:

- the offender makes a credible threat⁴ with the intent to place that person in reasonable fear of death or bodily injury;
- the victim was under 16 years of age; or
- the offender was subject to an injunction against repeat violence, domestic violence, dating violence, or another court imposed prohibition of conduct toward the victim or the victim’s property

HB 479 adds “cyberstalking” to the list of ways in which a stalking offense can be committed. As a result, if an offender willfully, maliciously and repeatedly follows, harasses, or *cyberstalks* another person, they commit the offense of stalking. The bill defines the term “cyberstalk” to mean engaging “in a course of conduct to communicate, or cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.” In August, 1999, the

¹ The term “course of conduct” is defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of ‘course of conduct.’ Such constitutionally protected activity includes picketing or other organized protests.” s. 784.048(1)(b), F.S.

² In determining whether an incident or series of incidents creates substantial emotional distress for a victim, courts have used an objective standard – whether a reasonable person would be put in substantial emotional distress when subjected to such conduct. See *Bouters v. State*, 659 So.2d 235, 238 (Fla. 1995).

³ See s. 784.048(1)(b), F.S. (defining “harass” for purposes of the stalking statute).

⁴ The term “credible threat” means “a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person.” s. 784.048(1)(c), F.S.

United States Attorney General recommended that states amend their stalking laws to include cyberstalking.⁵

HB 479 also expands the scope of aggravated stalking to include threats made against the child, sibling, spouse, parent or dependent of the person to whom the harassment is directed. Currently, the offense is limited to threats made directly against the victim.

This bill reenacts portions of the Criminal Punishment Code, the violent career criminals act, and other sections of law so that it will be clear that the changes in this bill apply to those sections.

C. SECTION DIRECTORY:

Section 1: Amends s. 784.048; defining term “cyberstalk” and including within the offense of stalking; revising elements of offense to include threats against family members.

Sections 2-5: Reenacts ss. 775.084, 790.065, 921.0022, and 960.001, F.S., to incorporate by reference the amendments made by bill to s. 784.048, F.S.

Section 6: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to affect state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider whether this bill would have any prison bed impact on the Department of Corrections. It is possible that many cyberstalking cases can be prosecuted under current law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local governments.

2. Expenditures:

This bill does not appear to have a fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

⁵ See “Cyberstalking: A New Challenge for Law Enforcement and Industry, A Report from the Attorney General to the Vice President”, August, 1999 at www.usdoj.gov/criminal/cybercrime/cyberstalking.htm (last accessed on March 23, 2003).

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

In Bouters v. State,⁶ the Florida Supreme Court upheld the stalking statute against vagueness and overbreadth challenges.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

⁶ 659 So. 2d 235 (Fla. 1995).