

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 916

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Technology Crimes

DATE: April 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Forbes</u>	<u>Jameson</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 916 amends section 784.048, Florida Statutes, which punishes cyberstalking, to expand the definition of “cyberstalk” to include accessing or attempting to access the online accounts or Internet-connected home electronic systems of another person without that person’s permission, causing substantial emotional distress to that person and serving no legitimate purpose.

The bill also amends section 815.06, Florida Statutes, which punishes various acts which are willfully, knowingly, and without authorization, committed against users of computers, computer systems, computer networks, or electronic devices. The bill provides for punishment of these acts when they are committed willfully, knowingly, without authorization, or *exceeding authorization*.

The Criminal Justice Impact Conference estimates that the bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V.

The bill is effective October 1, 2019.

II. Present Situation:

Cyberstalking (s. 784.048, F.S.)

Section 784.048, F.S., punishes cyberstalking. “Cyberstalking is a type of online harassment that involves using electronic means to stalk a victim, and generally refers to a pattern of threatening or malicious behaviors.”¹ Examples of cyberstalking include, but are not limited to, harassing or threatening e-mails, hacking the victim’s online accounts, creating false online accounts, posting victim’s sensitive personal information online, and using the victim’s personal information to sign up for mailing lists and services.²

“Cyberstalk” means to engage in a course of conduct to communicate, or to 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.³

Section 784.048, F.S., in part, provides that a person commits stalking, a first degree misdemeanor, if the person willfully, maliciously, and repeatedly cyberstalks another person.⁴

Section 784.048, F.S., in part, also provides that a person commits aggravated stalking, a third degree felony, if the person:

- Willfully, maliciously, and repeatedly cyberstalks another person and makes a credible threat to that person;
- After an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, F.S., or an injunction for protection against domestic violence pursuant to s. 741.30, F.S., or after any other court-imposed prohibition of conduct toward the subject person or that person’s property, knowingly, willfully, maliciously, and repeatedly cyberstalks another person;
- Willfully, maliciously, and repeatedly cyberstalks a child under 16 years of age; or
- After having been sentenced for a violation of s. 794.011, F.S. (sexual battery), s. 800.04, F.S. (lewd offenses against certain children), s. 847.0135(5), F.S. (lewd computer transmissions against certain children), and prohibited from contacting the victim of the offense under s. 921.244, F.S. (no-contact order), willfully, maliciously, and repeatedly cyberstalks the victim.⁵

¹ *Online Harassment & Cyberstalking* (Revised Oct. 25, 2018), Privacy Rights Clearinghouse, available at <https://www.privacyrights.org/consumer-guides/online-harassment-cyberstalking> (last visited on March 5, 2019).

² *Id.*

³ Section 784.048(1)(d), F.S.

⁴ Section 784.048(2), F.S.

⁵ Section 784.048(3)-(5) and (7), F.S. The punishment imposed under s. 748.048, F.S., runs consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, F.S., s. 800.04, F.S., or s. 847.135(5), F.S. Section 784.048(8), F.S.

Offenses Against Users of Computers, Computer Systems, Computer Networks, and Electronic Devices (s. 815.06, F.S.)

Section 815.06, F.S., punishes cybercrime. Cybercrime is defined as “any fraud or crime committed through or with the aid of computer programming or internet-related communications such as Web sites, e-mail, and chat rooms[.]”⁶

Section 815.06(2), F.S., provides that a person commits an offense against users⁷ of computers, computer systems, computer networks, or electronic devices if he or she willfully, knowingly, and without authorization:

- Accesses or causes to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized;
- Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroys, injures, or damages any computer, computer system, computer network, or electronic device;
- Introduces any computer contaminant into any computer, computer system, computer network, or electronic device; or
- Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.⁸

Generally, commission of any of these acts is a third degree felony.⁹ However, it is a second degree felony, if the person commits any of the acts described in s. 815.06(2), F.S., and:

- Damages a computer, computer equipment or supplies, a computer system, or a computer network and the damage or loss is at least \$5,000;
- Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property;
- Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or public service; or
- Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit.¹⁰

⁶ Damien Odunze, “Cyber Victimization by Hackers: A Criminological Analysis, v. 1, n. 1 (2018), p. 9, *Public Policy and Administration Research*, available at <https://pdfs.semanticscholar.org/fd89/f6fa17c03a639b7d7b9f5b3ddc492b6b49a8.pdf> (last visited on March 5, 2019).

⁷ “User” means a person with the authority to operate or maintain a computer, computer system, computer network, or electronic device. Section 815.06(1), F.S.

⁸ Section 815.06(2)(a)-(f), F.S.

⁹ Section 815.06(3)(a), F.S.

¹⁰ Section 815.06(3)(b)1.-4., F.S.

Further, it is a first degree felony if the person commits any of the acts described in s. 815.06(2), F.S., and the violation:

- Endangers human life; or
- Disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.¹¹

III. Effect of Proposed Changes:

The bill amends s. 784.048, F.S., which punishes cyberstalking, to expand the definition of the term “cyberstalk” to include accessing or attempting to access the online accounts or Internet-connected home electronic systems of another person without that person’s permission, causing substantial emotional distress to that person and serving no legitimate purpose.

A cyberstalking violation is punishable as stalking (first degree misdemeanor)¹² or aggravated stalking (a third degree felony),¹³ depending upon the circumstances of the cyberstalking.¹⁴

The bill also amends s. 815.06, F.S., which punishes various acts which are willfully, knowingly, and without authorization, committed against users of computers, computer systems, computer networks, or electronic devices. The bill provides for punishment of these acts when they are committed willfully, knowingly, without authorization, or *exceeding authorization*.

Generally, a violation of s. 815.06, F.S., is a third degree felony, but a violation may be a second degree felony¹⁵ or first degree felony,¹⁶ depending upon the circumstances of the violation.¹⁷

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Section 815.06(3)(c)1.-2., F.S.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

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

¹⁴ See “Present Situation” section of this analysis for a detailed description of prohibited acts and penalties.

¹⁵ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹⁶ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹⁷ See “Present Situation” section of this analysis for a detailed description of prohibited acts and penalties.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation, estimates that the bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). In addition, the number of offenders sentenced for cyberstalking cannot be determined from the available data.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 784.048 and 815.06.

This bill reenacts the following sections of the Florida Statutes: 790.065, 794.056, 847.0141, 901.41, 938.08, 938.085, 943.325, 960.001, 985.265, 1006.147, 775.30, 775.33, 782.04, and 934.07.

¹⁸ The CJIC estimate is available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB669.pdf> (last visited on April 11, 2019).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 11, 2019:

The committee substitute changes the subject of the bill from “cyberstalking” to “technology crimes.”

- B. **Amendments:**

None.