

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 Committee on Criminal Justice

BILL: SB 916

INTRODUCER: Senator Pizzo

SUBJECT: Cyberstalking

DATE: March 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 916 amends s. 784.048, F.S., which punishes cyberstalking, to redefine 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.

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*.

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. Fiscal Impact Statement.

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

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).

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

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

Section 815.06, F.S., punishes cybercrime. Broadly defined, “cybercrime” is “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

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.

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).

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

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

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.

¹¹ Section 815.06(3)(c)1.-2., F.S.

III. Effect of Proposed Changes:

The bill amends s. 784.048, F.S., which punishes cyberstalking, to redefine 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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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.

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).¹⁸

VI. Technical Deficiencies:

The subject of the bill, “cyberstalking,” appears to be too narrow in scope to cover the provisions of the bill. Staff recommends changing the subject to “technology crimes.”

The bill is entitled “An act relating to cyberstalking[.]” The two relevant sections of the bill are Sections 1 and 2. Section 1 amends s. 784.04, F.S., which punishes cyberstalking, to revise the definition of cyberstalking to include “accessing or attempting to access the online accounts or Internet-connected home electronic systems of another person without that person’s permission.” Section 2 amends s. 815.06, F.S., relating to offenses against users of computers, computer systems, computer networks, and electronic devices. Currently, the law provides that a person commits an offense against users of computers, etc., if he or she willfully, knowingly, and without authorization, commits any of the specified acts in subsection (2) of that section. The amendment provides that a person commits an offense against users of computers, etc., if he or she willfully, knowingly, and without authorization or exceeding authorization, commits any of those specified acts.

While it appears that the act included in the definition of “cyberstalk” in s. 785.04, F.S., is relevant to and probably naturally and logically connected to at least one of the acts prohibited in s. 815.06(2), F.S. (specifically, s. 815.06(2)(a), F.S., unauthorized access of a computer, etc.), the same cannot be said for all of the acts in subsection (2). Further, the definition of cyberstalking requires that the act covered by that definition cause emotional distress to the person subject to that act. In many cases, a violation of s. 815.06, F.S., is not a violation against an individual but rather against a government or company system or network.

VII. Related Issues:

None.

¹⁸ The CJIC estimate is available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB669.pdf> (last visited on March 5, 2019).

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.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
