

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 Committee on Criminal and Civil Justice

BILL: CS/SB 1084

INTRODUCER: Criminal Justice Committee and Senator Martin

SUBJECT: Sexual Cyberharassment

DATE: April 9, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Pre-meeting
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1084 amends s. 784.049, F.S., to include legislative findings, that a person depicted in a digitally forged intimate image created by or taken with the person’s consent retains a reasonable expectation that the image will remain private despite sharing the image with another person.

The bill provides in the definition of “sexually cyberharass,” that *absent affirmative consent to disseminate, intimate content creators have a reasonable expectation that individuals who view their content may not record or disseminate it*. The definition of “sexually explicit image,” is expanded to include *a digitally forged intimate image*.

Generally, the crime of sexual cyberharassment is a first degree misdemeanor. Under the bill, a person who commits this offense with the intent to cause physical, mental, economic, or reputational harm to an individual portrayed in the image, or for the purpose of profit or pecuniary gain, commits a third degree felony.

A person who commits a second or subsequent offense with the intent to cause physical, mental, economic, or reputational harm to an individual portrayed in the image, or for the purpose of profit or pecuniary gain, commits a third degree felony, and a second degree felony for a second or subsequent offense.¹

¹ A second degree felony is punishable by a term of imprisonment of 15 years and a \$10,000 fine as provided in ss. 775.082, 775.083 and 775.084, F.S.

The bill provides punitive damages as a remedy for violation of this section.

The bill also provides definitions of the terms “digitally forged intimate image” and “nudity.”

In addition, the bill amends s. 775.15, F.S., to increase the statutory limitations for prosecution of a violation of sexual cyberharassment in the following ways:

- A prosecution for a misdemeanor violation must be commenced within 5 years after the commission of the offense or within 3 years after the date on which the victim obtains knowledge of the offense or should have obtained such knowledge by the exercise of due diligence; and,
- A prosecution for a felony violation must be commenced within 7 years after the commission of the offense or within 3 years after the date on which the victim obtains knowledge of the offense or should have obtained such knowledge by exercise of due diligence.

The bill may have a positive insignificant prison bed impact (an increase of 10 or fewer beds) on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2025.

II. Present Situation:

Nonconsensual Pornography

The term “revenge porn” is now common in popular usage. It commonly involves one person posting on the Internet sexual images of a former partner following a breakup. In more academic parlance, it is defined as “describing a subset of nonconsensual pornography published for vengeful purposes.”²

Couples may take pictures of each other in sexual situations, but that does not typically imply consent to traffic in such images outside of the relationship. “Nonconsensual pornography” may thus be defined generally as “distribution of sexually graphic images of individuals without their consent.”

“The phrase ‘nonconsensual pornography’ encompasses ‘images originally obtained without consent (e.g., hidden recordings or recordings of sexual assaults) as well as images originally obtained with consent, usually within the context of a private or confidential relationship.’³

Nonconsensual distribution of intimate images is when someone takes or shares an intimate Revenge porn isn't limited to romantic partners. A co-worker, family member, or stranger could also gain access to your private images and share them publicly for a variety of reasons. Forty-six states and the District of Columbia have laws against revenge porn.⁴

² *State v. VanBuren*, 2018 VT 95, 2019 WL 2406957 (VT 2019).

³ *Id.*

⁴ Webmd, *What is Revenge Pornography?*, Medically Reviewed by Jennifer Robinson, MD on November 4, 2024, available at <https://www.webmd.com/sex-relationships/revenge-porn> (last visited March 10, 2025).

In *State v. VanBuren*, 2018 VT 95, The Vermont court strongly emphasized the extreme harm that revenge porn may cause:

The harm to the victims of nonconsensual pornography can be substantial. Images and videos can be directly disseminated to the victim's friends, family, and employers; posted and “tagged” (as in this case) so they are particularly visible to members of a victim's own community; and posted with identifying information such that they catapult to the top of the results of an online search of an individual's name. In the constellation of privacy interests, it is difficult to imagine something more private than images depicting an individual engaging in sexual conduct, or of a person's genitals, anus, or pubic area, that the person has not consented to sharing publicly. The personal consequences of such profound personal violation and humiliation generally include, at a minimum, extreme emotional distress.⁵

Deep Fakes

Deepfakes represent a subset of the general category of “synthetic media” or “synthetic content.” Many popular articles on the subject define synthetic media as any media which has been created or modified through the use of artificial intelligence/machine learning (AI/ML), especially if done in an automated fashion. Deepfakes continue to pose a threat for individuals and industries, including potential largescale impacts to nations, governments, businesses, and society, such as social media disinformation campaigns operated at scale by well-funded nation state actors. Experts from different disciplines whose research interests intersect at deepfakes tend to agree that the technology is rapidly advancing, and the high cost of producing top-quality deepfake content is declining. As a result, we expect an emerging threat landscape wherein the attacks will become easier and more successful, and the efforts to counter and mitigate these threats will need orchestration and collaboration by governments, industry, and society.⁶

Non-consensual pornography emerged as the catalyst for proliferating deepfake content and still represents a majority of AI-enabled synthetic content in the wild. In October 2020, researchers reported over 100,000 computer-generated fake nude images of women created without their consent or knowledge, according to Sensity AI, a firm that specializes in deepfake content and detection. Some of these nude images apparently depicted under-aged individuals as well. The

⁵ *State v. Vanburen*, 2018 VT 95 (VT 2019) (The Vermont Supreme Court held that the law prohibiting nonconsensual distribution of an intimate image was narrowly tailored enough to effectuate Vermont's compelling governmental interest in protecting individual privacy it would likely be upheld. The court indicated that its reasoning was based on the “U.S. Supreme Court's recognition of the relatively low constitutional significance of speech relating to purely private matters, evidence of potentially severe harm to individuals arising from nonconsensual publication of intimate depictions of them, and a litany of analogous restrictions on speech that are generally viewed as uncontroversial and fully consistent with the First Amendment.”).

⁶ Homeland Security, *Increasing Threat DeepFake Identities*, available at https://www.dhs.gov/sites/default/files/publications/increasing_threats_of_deepfake_identities_0.pdf (last visited March 10, 2025).

creators used an ecosystem of bots on the messaging platform Telegram to facilitate sharing, trading, and selling services associated with deepfake content.^{7,8}

Sexual Cyberharassment

Section 784.049, F.S., provides that “sexual cyberharass” means to publish to an internet website or disseminate through electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person without the depicted person’s consent, contrary to the depicted person’s reasonable expectation that the image would remain private, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. Evidence that the depicted person sent a sexually explicit image to another person does not, on its own, remove his or her reasonable expectation of privacy for that image. A person who willfully and maliciously sexually cyberharasses another person commits a first degree misdemeanor.⁹

A person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony.

A “Sexually explicit image” is any image depicting nudity,¹⁰ or depicting a person engaging in sexual conduct.^{11,12}

III. Effect of Proposed Changes:

The bill amends s. 784.049, F.S., to revise legislative findings, that a person depicted in a digitally forged intimate image created by or taken with the person’s consent retains a reasonable expectation that the image will remain private despite sharing the image with another person.

⁷ Siladitya Ray, Forbes, 20 Oct. 2020 | *Bot Generated Fake Nudes of Over 100,000 Women Without Their Knowledge, Says Report*, available at <https://www.forbes.com/sites/siladityaray/2020/10/20/bot-generated-fake-nudes-of-over-100000-women-without-their-knowledge-says-report/> (last visited March 13, 2025).

⁸ Karen Hao |MIT Technology Review| *Deepfake Porn is Ruining Women’s Lives. Now the Law My Finally Ban It*, available at <https://www.technologyreview.com/2021/02/12/1018222/deepfake-revenge-porn-coming-ban/> (last visited March 10, 2025).

⁹ A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year and \$1,000 fine, as provided in ss. 775.082 and 775.083.

¹⁰ “Nudity” means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother’s breastfeeding of her baby does not under any circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or incidental to feeding. Section 847.001(11), F.S.

¹¹ “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”, Section 847.001(19), F.S.

¹² Section 784.049(2)(c), F.S.

Sexual Cyberharass

The bill provides in the definition of “sexually cyberharass,” that *absent affirmative consent to disseminate, intimate content creators have a reasonable expectation that individuals who view their content may not record or disseminate it.*

The definition of “sexually explicit image,” is expanded to include *a digitally forged intimate image.*

Generally, the crime of sexual cyberharassment is a first degree misdemeanor. Under the bill, a person who commits this offense with the intent to cause physical, mental, economic, or reputational harm to an individual portrayed in the image, or for the purpose of profit or pecuniary gain, commits a third degree felony.

A person who commits a second or subsequent offense with the intent to cause physical, mental, economic, or reputational harm to an individual portrayed in the image, or for the purpose of profit or pecuniary gain, commits a third degree felony, and a second degree felony for a second or subsequent offense.¹³

The bill provides punitive damages as a remedy for violation of this section.

The bill provides the definitions of the following terms:

- “Digitally forged intimate image” is any intimate image that has been created, altered, adopted, or modified by electronic, mechanical, or other computer-generated means; depicts nudity of an identifiable individual; and appears to a reasonable person to be indistinguishable from an authentic visual depiction of the individual, regardless of whether the visual depiction indicates, through a label or some other form of information published with the visual depiction, that the visual depiction is not authentic.
- “Nudity” is the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully or opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother’s breastfeeding of her baby does not, under any circumstance, constitute nudity, regardless of whether the nipple is covered during or incidental to feeding.

Statute of Limitations

The bill amends s. 775.15, F.S., to increase the statutory limitations for prosecution of a violation of sexual cyberharassment the following ways:

- A prosecution for a misdemeanor violation must be commenced within 5 years after the commission of the offense or within 3 years after the date on which the victim obtains knowledge of the offense or should have obtained such knowledge by the exercise of due diligence.

¹³ A second degree felony is punishable by a term of imprisonment of 15 years and a \$10,000 fine as provided in ss. 775.082, 775.083 and 775.084, F.S.

- A prosecution for a felony violation must be commenced within 7 years after the commission of the offense or within 3 years after the date on which the victim obtains knowledge of the offense or should have obtained such knowledge by exercise of due diligence.

The bill takes effect on October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has provided a preliminary estimate that the bill may have a positive insignificant prison bed impact (an increase of 10 or fewer beds) on the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

- Per the DOC, in FY 23-24, there were 17 new commitments to prison for commercial sexual activity of a child under 18 years of age. Four of these commitments received life sentences, and three received sentences that would have them released within the five-year forecast window. However, it is not known how many of these offenders would fit the criteria described in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends 784.049 section of the Florida Statutes.

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 18, 2025:

The committee substitute:

- Provides a definition for the term “Nudity” that is consistent with other sections of the Florida Statutes.
- Revises the definition of “Digitally forged intimate image” to be more consistent with language about altered or generated images in other statutes.
- Revises language to provide that “absent affirmative consent to disseminate, the depicted person maintains his or her reasonable expectation of privacy.”
- Revises language to provide that sexually explicit images include a digitally forged intimate image.
- Adds legislative intent language that a person who creates a digitally forged image of themselves, or the image is created with his or her consent, remains an expectation of privacy.
- Increases the time limitation for the prosecution of misdemeanor and felony violations of sexual cyberharassment.

- B. **Amendments:**

None.