

8.26 SEXUAL CYBERHARASSMENT FOR FINANCIAL GAIN

§ 784.049(4), Fla. Stat.

To prove the crime of Sexual Cyberharassment for Financial Gain, the State must prove the following four elements beyond a reasonable doubt:

- 1. (Defendant) willfully and maliciously [published to an internet website] [or] [disseminated through electronic means to another person] a sexually explicit image of (victim).**
- 2. (Victim) did not consent to the [publication] [or] [dissemination].**
- 3. The [publication] [or] [dissemination] was contrary to (victim's) reasonable expectation that the image would remain private.**
- 4. (Defendant) did so for pecuniary gain or other financial gain.**

“Willfully” means knowingly, intentionally, and purposely.

A person has a reasonable expectation that a sexually explicit image would remain private if:

- 1. The image contains or conveys the personal identification information of the depicted person;**
or
- 2. The personal identification information of the depicted person is not contained or conveyed in the image itself, but is contemporaneously published or disseminated in such a manner that a person viewing the personal identification information would reasonably know that such information directly relates to the person depicted in the sexually explicit image.**

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.

“Sexually explicit image” means any image depicting nudity or depicting any person engaging in sexual conduct or depicting the display of semen or vaginal secretion on a person.

“Image” includes but is not limited to, any photograph, picture, motion picture, film, video, or representation.

“Nudity” means 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 breastfeeding her baby does not under any circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or incidental to feeding.]

If necessary, insert additional definitions from § 847.001, Fla. Stat.

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual 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 breastfeeding her baby does not under any circumstance constitute “sexual conduct.”]

“Personal identification information” means any information that identifies a person, and includes, but is not limited to, any name, postal or electronic mail address, telephone number, social security number, date of birth, or any unique physical representation.

As of February 2026, the courts had not determined whether the sexual cyberharassment statute requires actual malice or legal malice. The explanation of the two can be found in Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007). In the absence of clarification, trial judges must choose one of the following:

“Maliciously” means intentionally and without any lawful justification.

“Maliciously” means with ill will, hatred, spite, or an evil intent.

Lesser Included Offenses

SEXUAL CYBERHARASSMENT FOR FINANCIAL GAIN— 784.049(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
Sexual Cyberharassment		784.049(3)	8.26
	Attempt	777.04(1)	5.1

Comments

Sexual Cyberharassment for Financial Gain is a third degree felony. Simple Sexual Cyberharassment is a first degree misdemeanor. This instruction can be used for a misdemeanor Sexual Harassment trial if element #4 is not read to the jury.

Both Sexual Cyberharassment for Financial Gain and simple Sexual Cyberharassment can be bumped up one degree in severity based on the existence of a prior conviction. For purposes of this statute, the term “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

As of February 2026, it is unclear whether the existence of a prior conviction should be treated as an element of the crime that must be found by the jury or

whether a prior conviction can be proven to the judge at sentencing. If treated as an element, it would be error to inform the jury of a prior conviction. Therefore, if the information or indictment contains an allegation of a prior conviction, do not read the allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, the historical fact of a previous conviction would be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2018 [238 So. 3d 192] and was amended in 2020 [290 So. 3d 864], and on March 20, 2026.