

STATE OF NEW YORK

7519

2023-2024 Regular Sessions

IN ASSEMBLY

May 25, 2023

Introduced by M. of A. SILLITTI -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the correction law, in relation to establishing offenses involving sexually explicit digital alterations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "digital alterations protections act".

3 § 2. The penal law is amended by adding a new article 246 to read as
4 follows:

ARTICLE 246

OFFENSES INVOLVING SEXUALLY EXPLICIT DIGITAL ALTERATIONS

Section 246.00 Definitions.

8 246.05 Unlawful dissemination of a sexually explicit depiction
9 of an individual.

10 246.10 Unlawful publication of a sexually explicit depiction of
11 an individual.

12 246.15 Unlawful access of a sexually explicit depiction of a
13 child.

14 246.20 Unlawful distribution of a sexually explicit depiction of
15 a child in the second degree.

16 246.25 Unlawful distribution of a sexually explicit depiction of
17 a child in the first degree.

18 246.30 Affirmative defense.

19 246.35 Consent.

20 246.40 Application of article.

§ 246.00 Definitions.

21 As used in this article, the following definitions shall apply:
22

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 1. "Disseminate" and "publish" shall have the same meanings as such
2 terms are defined in section 250.40 of this title.

3 2. "Create" means to design, develop, devise, generate, issue, make,
4 manufacture, produce, or transmute.

5 3. "Sexually explicit depiction" means any work created through sexu-
6 ally explicit digitization, including still and audio visual.

7 4. "Sexually explicit digitization" means to realistically depict
8 either: (a) the nude body parts of another human being as the nude body
9 parts of the depicted individual or computer-generated nude body parts
10 as the nude body parts of the depicted individual; or (b) the depicted
11 individual engaging in sexual conduct, as defined by subdivision three
12 of section 263.00 of this part, or sexual contact, as defined by subdivi-
13 vision three of section 130.00 of this part, in which the depicted indi-
14 vidual did not engage.

15 5. "Audio visual" means any film, motion picture, audio and/or visual
16 recording, digital image, computer image or computer-generated image.

17 6. "Sexually explicit material" means any portion of a sexually
18 explicit depiction that shows the depicted individual performing, or
19 appearing to perform, in the nude, meaning with an unclothed or exposed
20 intimate part, as defined in section 245.15 of this title, or performing
21 in, appearing to perform in, or being subjected to, sexual conduct, as
22 defined by subdivision three of section 263.00 of this part, or sexual
23 contact, as defined by subdivision three of section 130.00 of this part.

24 7. "Depicted individual" means an identifiable person who appears, as
25 a result of sexually explicit digitization, to be giving a performance
26 that the identifiable person did not actually perform or that was actu-
27 ally performed by the identifiable person but was subsequently altered
28 to be in violation of this article.

29 8. "Identifiable person" means an individual whose image is or would
30 be clearly identifiable as a specific person by any individual. "Iden-
31 tifiable person" shall not be construed to require proof of the actual
32 identity of the individual.

33 9. "Individual" means a natural, human being.

34 § 246.05 Unlawful dissemination of a sexually explicit depiction of an
35 individual.

36 A person is guilty of unlawful dissemination of a sexually explicit
37 depiction of an individual when the person, with the intent to cause
38 harm to the reputation or emotional, financial, or physical welfare of
39 another person, disseminates sexually explicit material that includes
40 the depicted individual, and he or she knows or reasonably should have
41 known the depicted individual did not consent to its creation or its
42 dissemination.

43 Unlawful dissemination of a sexually explicit depiction of an individ-
44 ual is a class B misdemeanor.

45 § 246.10 Unlawful publication of a sexually explicit depiction of an
46 individual.

47 A person is guilty of unlawful publication of a sexually explicit
48 depiction of an individual when the person, with the intent to sexually
49 gratify that person or another person or with the intent to cause harm
50 to the reputation or emotional, financial, or physical welfare of anoth-
51 er person, publishes sexually explicit material that includes the
52 depicted individual, and he or she knows or reasonably should have known
53 the depicted individual did not consent to its creation or its publica-
54 tion.

55 Unlawful publication of a sexually explicit depiction of an individual
56 is a class A misdemeanor.

1 § 246.15 Unlawful access of a sexually explicit depiction of a child.

2 A person is guilty of unlawful access of a sexually explicit depiction
3 of a child when the person, knowing the character and content thereof,
4 knowingly accesses with intent to sexually gratify a person and to view
5 any sexually explicit depiction that includes sexual conduct by a child
6 less than seventeen years of age.

7 Unlawful access of a sexually explicit depiction of a child is a class
8 A misdemeanor.

9 § 246.20 Unlawful distribution of a sexually explicit depiction of a
10 child in the second degree.

11 A person is guilty of unlawful distribution of a sexually explicit
12 depiction of a child in the second degree when the person, knowing the
13 character and content thereof, disseminates or publishes sexually
14 explicit material that includes a depicted individual, and he or she
15 knows or reasonably should have known that the depicted individual is
16 less than seventeen years of age.

17 Unlawful distribution of a sexually explicit depiction of a child in
18 the second degree is a class E felony.

19 § 246.25 Unlawful distribution of a sexually explicit depiction of a
20 child in the first degree.

21 A person is guilty of unlawful distribution of a sexually explicit
22 depiction of a child in the first degree when the person, knowing the
23 character and content thereof, creates and either disseminates or
24 publishes sexually explicit material that includes a depicted individ-
25 ual, and the depicted individual is less than seventeen years of age.

26 Unlawful distribution of a sexually explicit depiction of a child in
27 the first degree is a class D felony.

28 § 246.30 Affirmative defense.

29 1. It shall be an affirmative defense to unlawful publication of a
30 sexually explicit depiction of an individual and unlawful dissemination
31 of a sexually explicit depiction of an individual that a depicted indi-
32 vidual who is eighteen years of age or older consented to the creation
33 and either the dissemination or publication of the sexually explicit
34 depiction.

35 (a) A depicted individual who is eighteen years of age or older may
36 consent to the creation, dissemination, or publication of sexually
37 explicit material only by knowingly and voluntarily signing an agreement
38 written in plain language that includes a general description of the
39 sexually explicit material, the sexually explicit depiction in which it
40 will be incorporated, and the nature of the depicted individual's
41 consent.

42 (b) A depicted individual may rescind consent by delivering written
43 notice within three business days from the date consent was given to the
44 person in whose favor consent was made, or longer if an agreement so
45 stipulates.

46 2. It shall not be a defense under this article that:

47 (a) there is a disclaimer included in the sexually explicit depiction
48 that communicates that the inclusion of the depicted individual was
49 unauthorized, that the depicted individual did not participate in the
50 creation or development of the sexually explicit depiction, or that the
51 sexually explicit depiction has been altered through digitization; or

52 (b) the features of the depicted individual have been or are altered
53 prior to or after the creation or distribution of the sexually explicit
54 depiction, provided that the depicted individual remains an identifiable
55 person.

56 § 246.35 Consent.

1 A person under eighteen years of age shall be incapable of consent for
2 the purposes of this article. No adult can consent on behalf of a person
3 under eighteen years of age.

4 § 246.40 Application of article.

5 1. This article shall not apply to the following:

6 (a) the reporting of unlawful conduct;

7 (b) the creation, dissemination, or publication of a sexually explicit
8 rendition of a depicted individual made during lawful and common prac-
9 tices of law enforcement, legal proceedings, or medical treatment;

10 (c) the creation, dissemination, or publication of a sexually explicit
11 depiction made for a legitimate public purpose, including for political
12 or newsworthy value or similar work, commentary, criticism, or disclo-
13 sure that is otherwise protected by the constitution of this state or of
14 the United States, provided that sexually explicit material shall not be
15 considered of newsworthy value solely because the depicted individual is
16 a public figure.

17 (d) the creation, dissemination, or publication of a sexually explicit
18 depiction that does not include sexually explicit material.

19 2. (a) Nothing in this article shall be construed to limit, or to
20 enlarge, the protections that 47 U.S.C. § 230 confers on an interactive
21 computer service for content provided by another information content
22 provider, as such terms are defined in 47 U.S.C. § 230.

23 (b) Nothing in this article shall be deemed to interfere with or
24 prohibit any rights established by section fifty-two-c of the civil
25 rights law, as added by chapter three hundred four of the laws of two
26 thousand twenty.

27 § 3. Subdivision 2 of section 30.10 of the criminal procedure law is
28 amended by adding a new paragraph (a-3) to read as follows:

29 (a-3) A prosecution for unlawful distribution of a sexually explicit
30 depiction of a child must be commenced within five years after the peri-
31 od set forth in paragraph (f) of subdivision three of this section;

32 § 4. Paragraph (f) of subdivision 3 of section 30.10 of the criminal
33 procedure law, as amended by chapter 11 of the laws of 2019, is amended
34 to read as follows:

35 (f) For purposes of a prosecution involving a sexual offense as
36 defined in article one hundred thirty of the penal law, other than a
37 sexual offense delineated in paragraph (a) of subdivision two of this
38 section, committed against a child less than eighteen years of age,
39 incest in the first, second or third degree as defined in sections
40 255.27, 255.26 and 255.25 of the penal law committed against a child
41 less than eighteen years of age, ~~or~~ use of a child in a sexual
42 performance as defined in section 263.05 of the penal law, unlawful
43 publication of a sexually explicit depiction of an individual as defined
44 in section 246.10 of the penal law, unlawful dissemination of a sexually
45 explicit depiction of an individual as defined in section 246.05 of the
46 penal law, or unlawful distribution of a sexually explicit depiction of
47 a child in the first degree or second degree as defined in sections
48 246.25 and 246.20 of the penal law, the period of limitation shall not
49 begin to run until the child has reached the age of twenty-three or the
50 offense is reported to a law enforcement agency or statewide central
51 register of child abuse and maltreatment, whichever occurs earlier.

52 § 5. Paragraph (e) of subdivision 4 of section 510.10 of the criminal
53 procedure law, as amended by section 2 of part UU of chapter 56 of the
54 laws of 2020, is amended to read as follows:

55 (e) a sex trafficking offense defined in section 230.34 or 230.34-a of
56 the penal law, or a felony sex offense defined in section 70.80 of the

1 penal law, or a crime involving incest as defined in section 255.25,
2 255.26 or 255.27 of such law, or a misdemeanor defined in article one
3 hundred thirty of such law, or a felony defined in article two hundred
4 forty-six of such law;

5 § 6. Subparagraph (v) of paragraph (b) of subdivision 1 of section
6 530.20 of the criminal procedure law, as amended by section 3 of part UU
7 of chapter 56 of the laws of 2020, is amended to read as follows:

8 (v) a sex trafficking offense defined in section 230.34 or 230.34-a of
9 the penal law, or a felony sex offense defined in section 70.80 of the
10 penal law or a crime involving incest as defined in section 255.25,
11 255.26 or 255.27 of such law, or a misdemeanor defined in article one
12 hundred thirty of such law, or a felony defined in article two hundred
13 forty-six of such law;

14 § 7. Paragraph (m) of subdivision 4 of section 530.40 of the criminal
15 procedure law, as added by section 4 of part UU of chapter 56 of the
16 laws of 2020, is amended to read as follows:

17 (m) assault in the third degree as defined in section 120.00 of the
18 penal law or arson in the third degree as defined in section 150.10 of
19 the penal law, when such crime is charged as a hate crime as defined in
20 section 485.05 of the penal law, or a felony defined in article two
21 hundred forty-six of the penal law;

22 § 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section
23 168-a of the correction law, as amended by chapter 189 of the laws of
24 2018, is amended to read as follows:

25 (i) a conviction of or a conviction for an attempt to commit any of
26 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,
27 130.45, 130.60, 230.34, 230.34-a, 250.50, 255.25, 255.26 [~~and~~], 255.27,
28 246.20 and 246.25 or article two hundred sixty-three of the penal law,
29 or section 135.05, 135.10, 135.20 or 135.25 of such law relating to
30 kidnapping offenses, provided the victim of such kidnapping or related
31 offense is less than seventeen years old and the offender is not the
32 parent of the victim, or section 230.04, where the person patronized is
33 in fact less than seventeen years of age, 230.05, 230.06, 230.11,
34 230.12, 230.13, subdivision two of section 230.30, section 230.32,
35 230.33, or 230.34 of the penal law, or section 230.25 of the penal law
36 where the person prostituted is in fact less than seventeen years old,
37 or

38 § 9. Severability. If any provision of this article, or any applica-
39 tion of any provision of this article, is held to be invalid, that shall
40 not affect the validity or effectiveness of any other provision of this
41 act, or of any other application of any provision of this act, which can
42 be given effect without that provision or application; and to that end,
43 the provisions and applications of this act are severable.

44 § 10. This act shall take effect immediately.