

571--A

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. BRAUNSTEIN, BRINDISI, PAULIN, SCHIMEL, McDONOUGH, DUPREY, MONTESANO, SIMOTAS, MORELLE, BARRETT, BENEDETTO, BLANKENBUSH, TENNEY, RAIA, OTIS, FINCH, QUART, SALADINO, ORTIZ, SKOUFIS, CLARK, BRABENEC, FRIEND -- Multi-Sponsored by -- M. of A. CROUCH, GALEF, MARKEY, McKEVITT, PALMESANO, RODRIGUEZ, SKARTADOS -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing the crime of non-consensual disclosure of sexually explicit images

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The penal law is amended by adding two new sections 250.70
2 and 250.75 to read as follows:
3 S 250.70 NON-CONSENSUAL DISCLOSURE OF SEXUALLY EXPLICIT IMAGES.
4 A PERSON IS GUILTY OF NON-CONSENSUAL DISCLOSURE OF SEXUALLY EXPLICIT
5 IMAGES WHEN HE OR SHE INTENTIONALLY AND KNOWINGLY DISCLOSES A PHOTO-
6 GRAPH, FILM, VIDEOTAPE, RECORDING, OR ANY OTHER REPRODUCTION OF THE
7 IMAGE OF ANOTHER PERSON WHOSE INTIMATE PARTS ARE EXPOSED OR WHO IS
8 ENGAGED IN AN ACT OF SEXUAL CONTACT WITHOUT SUCH PERSON'S CONSENT, WHEN
9 A REASONABLE PERSON WOULD HAVE KNOWN THAT THE PERSON DEPICTED WOULD NOT
10 HAVE CONSENTED TO SUCH DISCLOSURE, AND UNDER CIRCUMSTANCES IN WHICH THE
11 PERSON HAS A REASONABLE EXPECTATION OF PRIVACY. A PERSON WHO HAS
12 CONSENTED TO THE CAPTURE OR POSSESSION OF AN IMAGE WITHIN THE CONTEXT OF
13 A PRIVATE OR CONFIDENTIAL RELATIONSHIP RETAINS A REASONABLE EXPECTATION
14 OF PRIVACY WITH REGARD TO DISCLOSURE BEYOND THAT RELATIONSHIP.
15 1. FOR THE PURPOSES OF THIS SECTION:

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

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1 (A) "DISCLOSE" MEANS TO SELL, MANUFACTURE, GIVE, PROVIDE, LEND, TRADE,
2 MAIL, DELIVER, TRANSFER, PUBLISH, DISTRIBUTE, CIRCULATE, DISCLOSE, PRES-
3 ENT, EXHIBIT, ADVERTISE OR OFFER.

4 (B) "INTIMATE PARTS" MEANS THE NAKED GENITALS, PUBIC AREA, BUTTOCKS,
5 OR FEMALE ADULT NIPPLE OF THE PERSON.

6 (C) "SEXUAL CONTACT" MEANS SEXUAL INTERCOURSE, INCLUDING GENITAL-GENI-
7 TAL, ORAL-GENITAL, ANAL-GENITAL, OR ORAL-ANAL, WHETHER BETWEEN PERSONS
8 OF THE SAME OR OPPOSITE SEX.

9 2. THIS SECTION SHALL NOT APPLY TO:

10 (A) LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, CRIMINAL REPORT-
11 ING, OR LEGAL PROCEEDINGS, OR DISCLOSURES MADE IN THE REPORTING OF
12 UNLAWFUL ACTIVITY; OR

13 (B) SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN PUBLIC OR COMMERCIAL
14 SETTINGS, OR DISCLOSURES MADE FOR A LEGITIMATE PUBLIC PURPOSE.

15 NON-CONSENSUAL DISCLOSURE OF SEXUALLY EXPLICIT IMAGES IS A CLASS A
16 MISDEMEANOR.

17 S 250.75 CIVIL CAUSE OF ACTION FOR NON-CONSENSUAL DISCLOSURE OF SEXUALLY
18 EXPLICIT IMAGES.

19 1. A CIVIL CAUSE OF ACTION LIES AGAINST A PERSON WHO DISCLOSES,
20 THREATENS TO DISCLOSE AN IMAGE OF ANOTHER PERSON IDENTIFIABLE FROM THE
21 IMAGE ITSELF OR INFORMATION DISPLAYED IN CONNECTION WITH THE IMAGE AND
22 WHOSE INTIMATE PARTS ARE EXPOSED OR IS ENGAGED IN SEXUAL CONDUCT WITHOUT
23 THAT OTHER PERSON'S CONSENT, IF THE ACTOR:

24 (A) OBTAINED THE IMAGE OR IMAGES UNDER CIRCUMSTANCES IN WHICH A
25 REASONABLE PERSON WOULD KNOW OR UNDERSTAND THAT THE IMAGE WAS TO REMAIN
26 PRIVATE, INCLUDING BUT NOT LIMITED TO IMAGES SHARED WITHIN THE CONTEXT
27 OF A CONFIDENTIAL RELATIONSHIP THAT WERE THEN DISCLOSED BEYOND SUCH
28 RELATIONSHIP; OR

29 (B) KNOWINGLY OBTAINED THE IMAGE OR IMAGES UNDER FALSE PRETENSES OR
30 WITHOUT AUTHORIZATION OR BY EXCEEDING AUTHORIZED ACCESS TO PROPERTY,
31 ACCOUNTS, MESSAGES, FILES, DEVICES, OR RESOURCES.

32 2. THE FOLLOWING AFFIRMATIVE DEFENSE SHALL APPLY IF:

33 (A) THE DISTRIBUTED MATERIAL WAS CREATED OR DISTRIBUTED UNDER AN
34 AGREEMENT BY THE PERSON APPEARING IN THE MATERIAL FOR ITS PUBLIC USE AND
35 DISTRIBUTION; OR

36 (B) THE DISTRIBUTED MATERIAL CONSTITUTES A MATTER OF PUBLIC CONCERN,
37 LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, CRIMINAL REPORTING,
38 LEGAL PROCEEDINGS, MEDICAL TREATMENT, OR SCIENTIFIC OR EDUCATIONAL
39 ACTIVITIES; OR

40 (C) THE DISTRIBUTED MATERIAL WAS PHOTOGRAPHED, FILMED, VIDEOTAPED,
41 RECORDED, OR OTHERWISE REPRODUCED IN A PUBLIC PLACE AND UNDER CIRCUM-
42 STANCES IN WHICH THE PERSON DEPICTED HAD NO REASONABLE EXPECTATION OF
43 PRIVACY.

44 3. IN ADDITION TO OTHER RELIEF AVAILABLE AT LAW, INCLUDING AN ORDER BY
45 THE COURT TO DESTROY ANY IMAGE OBTAINED OR DISCLOSED IN VIOLATION OF
46 THIS SECTION, AND TO PRESERVE DISCOVERABLE INFORMATION, AND PRELIMINARY
47 AND PERMANENT INJUNCTIVE RELIEF, THE ACTOR SHALL BE LIABLE TO THE PLAIN-
48 TIFF FOR:

49 (A) ACTUAL DAMAGES, BUT NOT LESS THAN LIQUIDATED DAMAGES, TO BE
50 COMPUTED AT THE RATE OF ONE THOUSAND DOLLARS PER DAY FOR EACH DAY THE
51 IMAGE OR IMAGES WERE VIEWABLE OR EACH INSTANCE A THREAT TO DISTRIBUTE
52 WAS MADE OR AN IMAGE FRAUDULENTLY OBTAINED UP TO THIRTY DAYS, OR TEN
53 THOUSAND DOLLARS, WHICHEVER IS HIGHER; AND

54 (B) PUNITIVE DAMAGES; AND

55 (C) REASONABLE COURT COSTS AND ATTORNEYS' FEES.

1 4. IN AN ACTION BROUGHT UNDER THIS SECTION, ALL IDENTIFYING INFORMA-
2 TION ABOUT THE PLAINTIFF MAY BE REDACTED FROM PLEADINGS AND COURT
3 FILINGS AND THE PLAINTIFF MAY PROCEED UNDER PSEUDONYM; THE COURT SHALL
4 INFORM THE PLAINTIFF OF THE OPTION TO PROCEED UNDER PSEUDONYM AT THE
5 EARLIEST POSSIBLE POINT AND SHALL MAINTAIN THE RECORDS IN A MANNER THAT
6 PROTECTS THE PLAINTIFF'S CONFIDENTIALITY.

7 5. THE FOLLOWING DEFINITIONS SHALL APPLY: (A) "PERSONAL INFORMATION"
8 INCLUDES, BUT IS NOT LIMITED TO, NAME OR ANY PART THEREOF, ADDRESS OR
9 ANY PART THEREOF, AGE, NAMES OF FAMILY MEMBERS, MARITAL STATUS,
10 RELATIONSHIP TO DEFENDANT, RACE OR ETHNIC BACKGROUND, EMPLOYER, SCHOOL,
11 OR URLS, SOCIAL MEDIA ACCOUNT USERNAMES, AND SCREENSHOTS RELATED TO THE
12 CAUSE OF ACTION;

13 (B) "ACTUAL DAMAGES" INCLUDES, BUT IS NOT LIMITED TO, PAIN AND SUFFER-
14 ING, EMOTIONAL DISTRESS, ECONOMIC DAMAGES, AND LOST EARNINGS.

15 6. A CAUSE OF ACTION BROUGHT UNDER THIS SECTION MAY BE BROUGHT NO MORE
16 THAN FIVE YEARS AFTER THE LAST DISCLOSURE OR INCIDENT.

17 7. THE ACTOR'S CLAIM THAT THE DEPICTED PERSON IS A PUBLIC FIGURE SHALL
18 NOT BE SUFFICIENT TO ESTABLISH THE AFFIRMATIVE DEFENSE THAT DISTRIBUTION
19 CONSTITUTES A MATTER OF PUBLIC CONCERN.

20 8. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THAT A CRIMI-
21 NAL CHARGE BE BROUGHT OR A CRIMINAL CONVICTION BE OBTAINED AS A CONDI-
22 TION OF BRINGING A CIVIL CAUSE OF ACTION OR RECEIVING A CIVIL JUDGMENT
23 PURSUANT TO THIS SECTION OR BE CONSTRUED TO REQUIRE THAT ANY OF THE
24 RULES GOVERNING A CRIMINAL PROCEEDING BE APPLICABLE TO ANY SUCH CIVIL
25 ACTION.

26 S 2. This act shall take effect on the first of November next succeed-
27 ing the date on which it shall have become a law.