

# STATE OF NEW YORK

11188--A

## IN ASSEMBLY

June 13, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Braunstein, Gunther) -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the penal law, the criminal procedure law, the family court act and the civil rights law, in relation to establishing the crime of unlawful dissemination or publication of an intimate image

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

Section 1. The penal law is amended by adding a new section 245.15 to read as follows:

§ 245.15 Unlawful dissemination or publication of an intimate image.

1. A person is guilty of unlawful dissemination or publication of an intimate image when:

(a) with intent to cause material harm to the emotional, financial or physical welfare of another person, he or she intentionally disseminates or publishes a still or video image of such other person, who is identifiable from the still or video image itself or from information displayed in connection with the still or video image, without such other person's consent, which depicts:

(i) an unclothed or exposed intimate part of such other person; or

(ii) such other person engaging in sexual conduct as defined in subdivision ten of section 130.00 of this chapter with another person; and

(b) such still or video image was taken under circumstances when the person depicted had a reasonable expectation of privacy and the actor knew or reasonably should have known the person depicted intended for the still or video image to remain private indefinitely, regardless of whether the actor was present when the still or video image was taken.

2. For purposes of this section "intimate part" means the naked genitals, pubic area, anus or female nipple of the person.

2-a. For purposes of this section "disseminate" and "publish" shall have the same meaning as defined in section 250.40 of this title.

3. This section shall not apply to the following:

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

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1     (a) the reporting of unlawful conduct;  
2     (b) dissemination or publication of an intimate image made during  
3 lawful and common practices of law enforcement, legal proceedings or  
4 medical treatment;  
5     (c) images involving voluntary exposure in a commercial setting;  
6     (d) dissemination or publication of an intimate image made for a  
7 legitimate public purpose;  
8     (e) providers of an interactive computer service for images provided  
9 by another person. For purposes of this subdivision, "interactive  
10 computer service" shall mean: any information service, system or access  
11 software provider that provides or enables computer access by multiple  
12 users to a computer server, including specifically a service or system  
13 that provides access to the internet and such systems operated or  
14 services offered by libraries or educational institutions.  
15     Unlawful dissemination or publication of an intimate image is a class  
16 A misdemeanor.

17     § 2. The opening paragraph of subdivision 1 of section 530.11 of the  
18 criminal procedure law, as amended by section 4 of part NN of chapter 55  
19 of the laws of 2018, is amended to read as follows:

20     The family court and the criminal courts shall have concurrent juris-  
21 diction over any proceeding concerning acts which would constitute  
22 disorderly conduct, unlawful dissemination or publication of an intimate  
23 image, harassment in the first degree, harassment in the second degree,  
24 aggravated harassment in the second degree, sexual misconduct, forcible  
25 touching, sexual abuse in the third degree, sexual abuse in the second  
26 degree as set forth in subdivision one of section 130.60 of the penal  
27 law, stalking in the first degree, stalking in the second degree, stalk-  
28 ing in the third degree, stalking in the fourth degree, criminal  
29 mischief, menacing in the second degree, menacing in the third degree,  
30 reckless endangerment, strangulation in the first degree, strangulation  
31 in the second degree, criminal obstruction of breathing or blood circu-  
32 lation, assault in the second degree, assault in the third degree, an  
33 attempted assault, identity theft in the first degree, identity theft in  
34 the second degree, identity theft in the third degree, grand larceny in  
35 the fourth degree, grand larceny in the third degree, coercion in the  
36 second degree or coercion in the third degree as set forth in subdivi-  
37 sions one, two and three of section 135.60 of the penal law between  
38 spouses or former spouses, or between parent and child or between  
39 members of the same family or household except that if the respondent  
40 would not be criminally responsible by reason of age pursuant to section  
41 30.00 of the penal law, then the family court shall have exclusive  
42 jurisdiction over such proceeding. Notwithstanding a complainant's  
43 election to proceed in family court, the criminal court shall not be  
44 divested of jurisdiction to hear a family offense proceeding pursuant to  
45 this section. For purposes of this section, "disorderly conduct"  
46 includes disorderly conduct not in a public place. For purposes of this  
47 section, "members of the same family or household" with respect to a  
48 proceeding in the criminal courts shall mean the following:

49     § 3. The opening paragraph of subdivision 1 of section 812 of the  
50 family court act, as amended by section 5 of part NN of chapter 55 of  
51 the laws of 2018, is amended to read as follows:

52     The family court and the criminal courts shall have concurrent juris-  
53 diction over any proceeding concerning acts which would constitute  
54 disorderly conduct, unlawful dissemination or publication of an intimate  
55 image, harassment in the first degree, harassment in the second degree,  
56 aggravated harassment in the second degree, sexual misconduct, forcible

1 touching, sexual abuse in the third degree, sexual abuse in the second  
2 degree as set forth in subdivision one of section 130.60 of the penal  
3 law, stalking in the first degree, stalking in the second degree, stalk-  
4 ing in the third degree, stalking in the fourth degree, criminal  
5 mischief, menacing in the second degree, menacing in the third degree,  
6 reckless endangerment, criminal obstruction of breathing or blood circula-  
7 tion, strangulation in the second degree, strangulation in the first  
8 degree, assault in the second degree, assault in the third degree, an  
9 attempted assault, identity theft in the first degree, identity theft in  
10 the second degree, identity theft in the third degree, grand larceny in  
11 the fourth degree, grand larceny in the third degree, coercion in the  
12 second degree or coercion in the third degree as set forth in subdivi-  
13 sions one, two and three of section 135.60 of the penal law between  
14 spouses or former spouses, or between parent and child or between  
15 members of the same family or household except that if the respondent  
16 would not be criminally responsible by reason of age pursuant to section  
17 30.00 of the penal law, then the family court shall have exclusive  
18 jurisdiction over such proceeding. Notwithstanding a complainant's  
19 election to proceed in family court, the criminal court shall not be  
20 divested of jurisdiction to hear a family offense proceeding pursuant to  
21 this section. In any proceeding pursuant to this article, a court shall  
22 not deny an order of protection, or dismiss a petition, solely on the  
23 basis that the acts or events alleged are not relatively contemporaneous  
24 with the date of the petition, the conclusion of the fact-finding or the  
25 conclusion of the dispositional hearing. For purposes of this article,  
26 "disorderly conduct" includes disorderly conduct not in a public place.  
27 For purposes of this article, "members of the same family or household"  
28 shall mean the following:

29 § 4. The civil rights law is amended by adding a new section 52-b to  
30 read as follows:

31 § 52-b. Private right of action for unlawful dissemination or publica-  
32 tion of an intimate image. 1. a. Any website or internet service provid-  
33 er that hosts or transmits a still or video image, viewable in this  
34 state, taken under circumstances where the person depicted had a reason-  
35 able expectation of privacy, which depicts:

36 (i) an unclothed or exposed intimate part, as defined in section  
37 245.15 of the penal law, of a resident of this state; or

38 (ii) a resident of this state engaging in sexual conduct as defined in  
39 subdivision ten of section 130.00 of the penal law with another person;  
40 and

41 b. Such still or video image is hosted or transmitted without the  
42 consent of such resident of this state, shall be subject to personal  
43 jurisdiction in a civil action in this state to the maximum extent  
44 permitted under the United States constitution and federal law.

45 2. Regardless of whether or not the original still or video image was  
46 consensually obtained, a person depicted in a still or video image shall  
47 have a cause of action against an individual who, for the purpose of  
48 harassing, annoying or alarming such person, disseminated or published,  
49 or threatened to disseminate or publish, such still or video image,  
50 where such image:

51 a. was taken when such person had a reasonable expectation of privacy;  
52 and

53 b. depicts (i) an unclothed or exposed intimate part of such person;  
54 or (ii) such person engaging in sexual conduct, as defined in subdivi-  
55 sion ten of section 130.00 of the penal law, with another person; and

1 c. was disseminated or published, or threatened to be disseminated or  
2 published, without the consent of such person.

3 3. In any action commenced pursuant to subdivision two of this  
4 section, the finder of fact, in its discretion, may award injunctive  
5 relief, punitive damages, compensatory damages and reasonable court  
6 costs and attorney's fees.

7 4. This section shall not apply to the following:

8 a. the reporting of unlawful conduct;

9 b. dissemination or publication of an intimate still or video image  
10 made during lawful and common practices of law enforcement, legal  
11 proceedings or medical treatment;

12 c. images involving voluntary exposure in a commercial setting; or

13 d. dissemination or publication of an intimate still or video image  
14 made for a legitimate public purpose.

15 5. Any person depicted in a still or video image that depicts an  
16 unclothed or exposed intimate part of such person, or such person engag-  
17 ing in sexual conduct as defined in subdivision ten of section 130.00 of  
18 the penal law with another person, which is disseminated or published  
19 without the consent of such person and where such person had a reason-  
20 able expectation of privacy, may maintain an action or special proceed-  
21 ing for a court order to require any website or internet service provid-  
22 er that is subject to personal jurisdiction under subdivision one of  
23 this section to permanently remove such still or video image.

24 6. A cause of action or special proceeding under this section shall be  
25 commenced the later of either:

26 a. three years after the dissemination or publication of an image; or

27 b. one year from the date a person discovers, or reasonably should  
28 have discovered, the dissemination or publication of such image.

29 7. Nothing herein shall be read to require a prior criminal complaint,  
30 prosecution or conviction to establish the elements of the cause of  
31 action provided for by this section.

32 8. The provisions of this section are in addition to, but shall not  
33 supersede, any other rights or remedies available in law or equity.

34 9. If any provision of this section or its application to any person  
35 or circumstance is held invalid, the invalidity shall not affect other  
36 provisions or applications of this section which can be given effect  
37 without the invalid provision or application, and to this end the  
38 provisions of this section are severable.

39 § 5. This act shall take effect on the sixtieth day after it shall  
40 have become a law; provided, however, that:

41 (a) if section 4 of part NN of chapter 55 of the laws of 2018 shall  
42 not have taken effect on or before such effective date, then section two  
43 of this act shall take effect on the same date and in the same manner as  
44 such section of such chapter of the laws of 2018, takes effect; and

45 (b) if section 5 of part NN of chapter 55 of the laws of 2018 shall  
46 not have taken effect on or before such effective date, then section  
47 three of this act shall take effect on the same date and in the same  
48 manner as such section of such chapter of the laws of 2018, takes  
49 effect.