

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:

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

3 § 245.15 Unlawful dissemination or publication of an intimate image.

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

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

12 (i) an unclothed or exposed intimate part of such other person; or
13 (ii) such other person engaging in sexual conduct as defined in subdi-
14 vision ten of section 130.00 of this chapter with another person; and

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

20 2. For purposes of this section "intimate part" means the naked geni-
21 tals, pubic area, anus or female nipple of the person.

22 2-a. For purposes of this section "disseminate" and "publish" shall
23 have the same meaning as defined in section 250.40 of this title.

24 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.