STATE OF NEW YORK

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IN ASSEMBLY

January 22, 2019

Introduced by M. of A. BRAUNSTEIN, GUNTHER, WEPRIN, PAULIN, OTIS, BUTTENSCHON, M. L. MILLER -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 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 defendant knew or reasonably should have known the person depicted intended for the still or video image to remain private, regardless of whether the defendant was present when the still or video image was taken.

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

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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:

(a) the reporting of unlawful conduct;

(b) dissemination or publication of an intimate image made during lawful and common practices of law enforcement, legal proceedings or medical treatment;

(c) images involving voluntary exposure in a public or commercial setting;

(d) dissemination or publication of an intimate image made for a legitimate public purpose;

(e) providers of an interactive computer service for images provided by another person. For purposes of this subdivision, "interactive computer service" shall mean: any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

Unlawful dissemination or publication of an intimate image is a class A misdemeanor.

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

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, unlawful dissemination or publication of an intimate image, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree, coercion in the second degree or coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. For purposes of this section, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:

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

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, **unlawful dissemination or publication of an intimate image,** harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree, coercion in the second degree or coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

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

§ 52-b. Private right of action for unlawful dissemination or publication of an intimate image. 1. Any person depicted in a still or video image, regardless of whether or not the original still or video image was consensually obtained, shall have a cause of action against an individual who, for the purpose of harassing, annoying or alarming such person, disseminated or published, or threatened to disseminate or publish, such still or video image, where such image:

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

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

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

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

3. This section shall not apply to the following:

a. the reporting of unlawful conduct;

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

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

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

e. providers of an interactive computer service for images provided by another person. For purposes of this paragraph, "interactive computer service" shall mean any information service, system or access software provider that enables computer access by multiple users to that computer server, including specifically, a service that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

4. Any person depicted in a still or video image that depicts an unclothed or exposed intimate part of such person, or such person engaging in sexual conduct as defined in subdivision ten of section 130.00 of the penal law with another person, which is disseminated or published without the consent of such person and where such person had a reasonable expectation of privacy, may maintain an action or special proceeding for a court order to require any website that is subject to personal jurisdiction under subdivision five of this section to permanently remove such still or video image; any such court order granted pursuant to this subdivision may direct removal only as to images that are reasonably within such website's control.

5. a. Any website that hosts or transmits a still or video image, viewable in this state, taken under circumstances where the person depicted had a reasonable expectation of privacy, which depicts:

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

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

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

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

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

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

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

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

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

§ 5. This act shall take effect on the sixtieth day after it shall have become a law.