

# STATE OF NEW YORK

1719--A

2019-2020 Regular Sessions

## IN SENATE

January 15, 2019

Introduced by Sens. MARTINEZ, BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

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1 2-a. For purposes of this section "disseminate" and "publish" shall  
2 have the same meaning as defined in section 250.40 of this title.

3 3. This section shall not apply to the following:

4 (a) the reporting of unlawful conduct;

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

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

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

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

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

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

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

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

55 The family court and the criminal courts shall have concurrent juris-  
56 diction over any proceeding concerning acts which would constitute

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

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

34 § 52-b. Private right of action for unlawful dissemination or publica-  
35 tion of an intimate image. 1. Any person depicted in a still or video  
36 image, regardless of whether or not the original still or video image  
37 was consensually obtained, shall have a cause of action against an indi-  
38 vidual who, for the purpose of harassing, annoying or alarming such  
39 person, disseminated or published, or threatened to disseminate or  
40 publish, such still or video image, where such image:

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

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

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

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

52 3. This section shall not apply to the following:

53 a. the reporting of unlawful conduct;

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

1 c. images involving voluntary exposure in a commercial setting;  
2 d. dissemination or publication of an intimate still or video image  
3 made for a legitimate public purpose; or

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

11 4. Any person depicted in a still or video image that depicts an  
12 unclothed or exposed intimate part of such person, or such person engag-  
13 ing in sexual conduct as defined in subdivision ten of section 130.00 of  
14 the penal law with another person, which is disseminated or published  
15 without the consent of such person and where such person had a reason-  
16 able expectation of privacy, may maintain an action or special proceed-  
17 ing for a court order to require any website that is subject to personal  
18 jurisdiction under subdivision five of this section to permanently  
19 remove such still or video image; any such court order granted pursuant  
20 to this subdivision may direct removal only as to images that are  
21 reasonably within such website's control.

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

25 (i) an unclothed or exposed intimate part, as defined in section  
26 245.15 of the penal law, of a resident of this state; or

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

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

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

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

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

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

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

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

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