

STATE OF NEW YORK

1719--B

Cal. No. 61

2019-2020 Regular Sessions

IN SENATE

January 15, 2019

Introduced by Sens. MARTINEZ, BOYLE, THOMAS -- 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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in 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:

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, regardless of whether the
19 actor 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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1 2. For purposes of this section "intimate part" means the naked geni-
2 tals, pubic area, anus or female nipple of the person.

3 2-a. For purposes of this section "disseminate" and "publish" shall
4 have the same meaning as defined in section 250.40 of this title.

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

6 (a) the reporting of unlawful conduct;

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

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

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

13 (e) providers of an interactive computer service as defined in 47
14 U.S.C. § 230, for images provided by another person or information
15 content provider.

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

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

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

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

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

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

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

32 § 52-b. Private right of action for unlawful dissemination or publica-
33 tion of an intimate image. 1. Any person depicted in a still or video
34 image, regardless of whether or not the original still or video image
35 was consensually obtained, shall have a cause of action against an indi-
36 vidual who, for the purpose of harassing, annoying or alarming such
37 person, disseminated or published, or threatened to disseminate or
38 publish, such still or video image, where such image:

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

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

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

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

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

51 a. the reporting of unlawful conduct;

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

55 c. images involving voluntary exposure in a commercial setting;

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

3 e. providers of an interactive computer service as defined in 47
4 U.S.C. § 230, for images provided by another person or information
5 content provider.

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

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

20 (i) an unclothed or exposed intimate part, as defined in section
21 245.15 of the penal law, of a resident of this state; or

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

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

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

31 a. three years after the dissemination or publication of an image; or
32 b. one year from the date a person discovers, or reasonably should
33 have discovered, the dissemination or publication of such image.

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

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

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

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