

# STATE OF NEW YORK

8510

## IN SENATE

February 7, 2024

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the correction law, in relation to establishing offenses involving sexually explicit digital alterations

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "digital alterations protections act".

3 § 2. The penal law is amended by adding a new article 246 to read as  
4 follows:

### ARTICLE 246

#### OFFENSES INVOLVING SEXUALLY EXPLICIT DIGITAL ALTERATIONS

##### Section 246.00 Definitions.

8 246.05 Unlawful dissemination of a sexually explicit depiction  
9 of an individual.

10 246.10 Unlawful publication of a sexually explicit depiction of  
11 an individual.

12 246.15 Unlawful access of a sexually explicit depiction of a  
13 child.

14 246.20 Unlawful distribution of a sexually explicit depiction of  
15 a child in the second degree.

16 246.25 Unlawful distribution of a sexually explicit depiction of  
17 a child in the first degree.

18 246.30 Affirmative defense.

19 246.35 Consent.

20 246.40 Application of article.

##### § 246.00 Definitions.

22 As used in this article, the following definitions shall apply:

23 1. "Disseminate" and "publish" shall have the same meanings as such  
24 terms are defined in section 250.40 of this title.

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

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1 2. "Create" means to design, develop, devise, generate, issue, make,  
2 manufacture, produce, or transmute.

3 3. "Sexually explicit depiction" means any work created through sexu-  
4 ally explicit digitization, including still and audio visual.

5 4. "Sexually explicit digitization" means to realistically depict  
6 either: (a) the nude body parts of another human being as the nude body  
7 parts of the depicted individual or computer-generated nude body parts  
8 as the nude body parts of the depicted individual; or (b) the depicted  
9 individual engaging in sexual conduct, as defined by subdivision three  
10 of section 263.00 of this part, or sexual contact, as defined by subdivi-  
11 vision three of section 130.00 of this part, in which the depicted indi-  
12 vidual did not engage.

13 5. "Audio visual" means any film, motion picture, audio and/or visual  
14 recording, digital image, computer image or computer-generated image.

15 6. "Sexually explicit material" means any portion of a sexually  
16 explicit depiction that shows the depicted individual performing, or  
17 appearing to perform, in the nude, meaning with an unclothed or exposed  
18 intimate part, as defined in section 245.15 of this title, or performing  
19 in, appearing to perform in, or being subjected to, sexual conduct, as  
20 defined by subdivision three of section 263.00 of this part, or sexual  
21 contact, as defined by subdivision three of section 130.00 of this part.

22 7. "Depicted individual" means an identifiable person who appears, as  
23 a result of sexually explicit digitization, to be giving a performance  
24 that the identifiable person did not actually perform or that was actu-  
25 ally performed by the identifiable person but was subsequently altered  
26 to be in violation of this article.

27 8. "Identifiable person" means an individual whose image is or would  
28 be clearly identifiable as a specific person by any individual. "Iden-  
29 tifiable person" shall not be construed to require proof of the actual  
30 identity of the individual.

31 9. "Individual" means a natural, human being.

32 § 246.05 Unlawful dissemination of a sexually explicit depiction of an  
33 individual.

34 A person is guilty of unlawful dissemination of a sexually explicit  
35 depiction of an individual when the person, with the intent to cause  
36 harm to the reputation or emotional, financial, or physical welfare of  
37 another person, disseminates sexually explicit material that includes  
38 the depicted individual, and he or she knows or reasonably should have  
39 known the depicted individual did not consent to its creation or its  
40 dissemination.

41 Unlawful dissemination of a sexually explicit depiction of an individ-  
42 ual is a class B misdemeanor.

43 § 246.10 Unlawful publication of a sexually explicit depiction of an  
44 individual.

45 A person is guilty of unlawful publication of a sexually explicit  
46 depiction of an individual when the person, with the intent to sexually  
47 gratify that person or another person or with the intent to cause harm  
48 to the reputation or emotional, financial, or physical welfare of anoth-  
49 er person, publishes sexually explicit material that includes the  
50 depicted individual, and he or she knows or reasonably should have known  
51 the depicted individual did not consent to its creation or its publica-  
52 tion.

53 Unlawful publication of a sexually explicit depiction of an individual  
54 is a class A misdemeanor.

55 § 246.15 Unlawful access of a sexually explicit depiction of a child.

1 A person is guilty of unlawful access of a sexually explicit depiction  
2 of a child when the person, knowing the character and content thereof,  
3 knowingly accesses with intent to sexually gratify a person and to view  
4 any sexually explicit depiction that includes sexual conduct by a child  
5 less than seventeen years of age.

6 Unlawful access of a sexually explicit depiction of a child is a class  
7 A misdemeanor.

8 § 246.20 Unlawful distribution of a sexually explicit depiction of a  
9 child in the second degree.

10 A person is guilty of unlawful distribution of a sexually explicit  
11 depiction of a child in the second degree when the person, knowing the  
12 character and content thereof, disseminates or publishes sexually  
13 explicit material that includes a depicted individual, and he or she  
14 knows or reasonably should have known that the depicted individual is  
15 less than seventeen years of age.

16 Unlawful distribution of a sexually explicit depiction of a child in  
17 the second degree is a class E felony.

18 § 246.25 Unlawful distribution of a sexually explicit depiction of a  
19 child in the first degree.

20 A person is guilty of unlawful distribution of a sexually explicit  
21 depiction of a child in the first degree when the person, knowing the  
22 character and content thereof, creates and either disseminates or  
23 publishes sexually explicit material that includes a depicted individ-  
24 ual, and the depicted individual is less than seventeen years of age.

25 Unlawful distribution of a sexually explicit depiction of a child in  
26 the first degree is a class D felony.

27 § 246.30 Affirmative defense.

28 1. It shall be an affirmative defense to unlawful publication of a  
29 sexually explicit depiction of an individual and unlawful dissemination  
30 of a sexually explicit depiction of an individual that a depicted indi-  
31 vidual who is eighteen years of age or older consented to the creation  
32 and either the dissemination or publication of the sexually explicit  
33 depiction.

34 (a) A depicted individual who is eighteen years of age or older may  
35 consent to the creation, dissemination, or publication of sexually  
36 explicit material only by knowingly and voluntarily signing an agreement  
37 written in plain language that includes a general description of the  
38 sexually explicit material, the sexually explicit depiction in which it  
39 will be incorporated, and the nature of the depicted individual's  
40 consent.

41 (b) A depicted individual may rescind consent by delivering written  
42 notice within three business days from the date consent was given to the  
43 person in whose favor consent was made, or longer if an agreement so  
44 stipulates.

45 2. It shall not be a defense under this article that:

46 (a) there is a disclaimer included in the sexually explicit depiction  
47 that communicates that the inclusion of the depicted individual was  
48 unauthorized, that the depicted individual did not participate in the  
49 creation or development of the sexually explicit depiction, or that the  
50 sexually explicit depiction has been altered through digitization; or

51 (b) the features of the depicted individual have been or are altered  
52 prior to or after the creation or distribution of the sexually explicit  
53 depiction, provided that the depicted individual remains an identifiable  
54 person.

55 § 246.35 Consent.

1 A person under eighteen years of age shall be incapable of consent for  
2 the purposes of this article. No adult can consent on behalf of a person  
3 under eighteen years of age.

4 § 246.40 Application of article.

5 1. This article shall not apply to the following:

6 (a) the reporting of unlawful conduct;

7 (b) the creation, dissemination, or publication of a sexually explicit  
8 rendition of a depicted individual made during lawful and common prac-  
9 tices of law enforcement, legal proceedings, or medical treatment;

10 (c) the creation, dissemination, or publication of a sexually explicit  
11 depiction made for a legitimate public purpose, including for political  
12 or newsworthy value or similar work, commentary, criticism, or disclo-  
13 sure that is otherwise protected by the constitution of this state or of  
14 the United States, provided that sexually explicit material shall not be  
15 considered of newsworthy value solely because the depicted individual is  
16 a public figure.

17 (d) the creation, dissemination, or publication of a sexually explicit  
18 depiction that does not include sexually explicit material.

19 2. (a) Nothing in this article shall be construed to limit, or to  
20 enlarge, the protections that 47 U.S.C. § 230 confers on an interactive  
21 computer service for content provided by another information content  
22 provider, as such terms are defined in 47 U.S.C. § 230.

23 (b) Nothing in this article shall be deemed to interfere with or  
24 prohibit any rights established by section fifty-two-c of the civil  
25 rights law, as added by chapter three hundred four of the laws of two  
26 thousand twenty.

27 § 3. Subdivision 2 of section 30.10 of the criminal procedure law is  
28 amended by adding a new paragraph (a-3) to read as follows:

29 (a-3) A prosecution for unlawful distribution of a sexually explicit  
30 depiction of a child must be commenced within five years after the peri-  
31 od set forth in paragraph (f) of subdivision three of this section;

32 § 4. Paragraph (f) of subdivision 3 of section 30.10 of the criminal  
33 procedure law, as amended by chapter 11 of the laws of 2019, is amended  
34 to read as follows:

35 (f) For purposes of a prosecution involving a sexual offense as  
36 defined in article one hundred thirty of the penal law, other than a  
37 sexual offense delineated in paragraph (a) of subdivision two of this  
38 section, committed against a child less than eighteen years of age,  
39 incest in the first, second or third degree as defined in sections  
40 255.27, 255.26 and 255.25 of the penal law committed against a child  
41 less than eighteen years of age, ~~or~~ use of a child in a sexual  
42 performance as defined in section 263.05 of the penal law, unlawful  
43 publication of a sexually explicit depiction of an individual as defined  
44 in section 246.10 of the penal law, unlawful dissemination of a sexually  
45 explicit depiction of an individual as defined in section 246.05 of the  
46 penal law, or unlawful distribution of a sexually explicit depiction of  
47 a child in the first degree or second degree as defined in sections  
48 246.25 and 246.20 of the penal law, the period of limitation shall not  
49 begin to run until the child has reached the age of twenty-three or the  
50 offense is reported to a law enforcement agency or statewide central  
51 register of child abuse and maltreatment, whichever occurs earlier.

52 § 5. Paragraph (e) of subdivision 4 of section 510.10 of the criminal  
53 procedure law, as amended by section 2 of part UU of chapter 56 of the  
54 laws of 2020, is amended to read as follows:

55 (e) a sex trafficking offense defined in section 230.34 or 230.34-a of  
56 the penal law, or a felony sex offense defined in section 70.80 of the

1 penal law, or a crime involving incest as defined in section 255.25,  
2 255.26 or 255.27 of such law, or a misdemeanor defined in article one  
3 hundred thirty of such law, or a felony defined in article two hundred  
4 forty-six of such law;

5 § 6. Subparagraph (v) of paragraph (b) of subdivision 1 of section  
6 530.20 of the criminal procedure law, as amended by section 3 of part UU  
7 of chapter 56 of the laws of 2020, is amended to read as follows:

8 (v) a sex trafficking offense defined in section 230.34 or 230.34-a of  
9 the penal law, or a felony sex offense defined in section 70.80 of the  
10 penal law or a crime involving incest as defined in section 255.25,  
11 255.26 or 255.27 of such law, or a misdemeanor defined in article one  
12 hundred thirty of such law, or a felony defined in article two hundred  
13 forty-six of such law;

14 § 7. Paragraph (m) of subdivision 4 of section 530.40 of the criminal  
15 procedure law, as added by section 4 of part UU of chapter 56 of the  
16 laws of 2020, is amended to read as follows:

17 (m) assault in the third degree as defined in section 120.00 of the  
18 penal law or arson in the third degree as defined in section 150.10 of  
19 the penal law, when such crime is charged as a hate crime as defined in  
20 section 485.05 of the penal law, or a felony defined in article two  
21 hundred forty-six of the penal law;

22 § 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
23 168-a of the correction law, as amended by chapter 189 of the laws of  
24 2018, is amended to read as follows:

25 (i) a conviction of or a conviction for an attempt to commit any of  
26 the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40,  
27 130.45, 130.60, 230.34, 230.34-a, 250.50, 255.25, 255.26 [~~and~~], 255.27,  
28 246.20 and 246.25 or article two hundred sixty-three of the penal law,  
29 or section 135.05, 135.10, 135.20 or 135.25 of such law relating to  
30 kidnapping offenses, provided the victim of such kidnapping or related  
31 offense is less than seventeen years old and the offender is not the  
32 parent of the victim, or section 230.04, where the person patronized is  
33 in fact less than seventeen years of age, 230.05, 230.06, 230.11,  
34 230.12, 230.13, subdivision two of section 230.30, section 230.32,  
35 230.33, or 230.34 of the penal law, or section 230.25 of the penal law  
36 where the person prostituted is in fact less than seventeen years old,  
37 or

38 § 9. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
39 168-a of the correction law, as amended by chapter 23 of the laws of  
40 2024, is amended to read as follows:

41 (i) a conviction of or a conviction for an attempt to commit any of  
42 the provisions of sections 120.70, 130.20, 130.25, 130.30, former  
43 section 130.40, former section 130.45, sections 130.60, 230.34,  
44 230.34-a, 250.50, 255.25, 255.26 [~~and~~], 255.27, 246.20 and 246.25 or  
45 article two hundred sixty-three of the penal law, or section 135.05,  
46 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses,  
47 provided the victim of such kidnapping or related offense is less than  
48 seventeen years old and the offender is not the parent of the victim, or  
49 section 230.04, where the person patronized is in fact less than seven-  
50 teen years of age, 230.05, 230.06, 230.11, 230.12, 230.13, subdivision  
51 two of section 230.30, section 230.32, 230.33, or 230.34 of the penal  
52 law, or section 230.25 of the penal law where the person prostituted is  
53 in fact less than seventeen years old, or

54 § 10. Severability. If any provision of this article, or any applica-  
55 tion of any provision of this article, is held to be invalid, that shall  
56 not affect the validity or effectiveness of any other provision of this

1 act, or of any other application of any provision of this act, which can  
2 be given effect without that provision or application; and to that end,  
3 the provisions and applications of this act are severable.  
4 § 11. This act shall take effect immediately; provided, however, that  
5 the amendments to subdivision 2 of section 168-a of the correction law,  
6 made by section nine of this act shall take effect on the same date and  
7 in the same manner as section 32 of chapter 23 of the laws of 2024,  
8 takes effect.