STATE OF NEW YORK

1042

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

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

AN ACT to amend the penal law and the civil rights law, in relation to unlawful dissemination or publication of intimate images created by digitization and of sexually explicit depictions of an individual; and to repeal certain provisions of the penal law relating thereto

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

Section 1. Subdivisions 1 and 2 of section 245.15 of the penal law, as added by chapter 109 of the laws of 2019, are amended to read as follows:

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~~] **they** intentionally [~~disseminates~~] **disseminate** or [~~publishes~~] **publish** a still or video image [~~of~~] **depicting** such other person[~~, who is identifiable~~] **with one or more intimate parts exposed or engaging in sexual conduct with another person, including an image created or altered by digitization, where such person may reasonably be identified** 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~~] **the actor knew or reasonably should have known that the person depicted did not consent to such dissemination or publication, including the dissemination or publication of an image taken with the consent of the person depicted** when [~~the~~] **such** person [~~depicted~~] had a reasonable expectation that the image would remain private [~~and the actor knew or reasonably~~

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

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~~should have known the person depicted intended for the still or video image to remain private~~], regardless of whether the actor was present when [~~the still or video~~] **such** image was taken.

2. For purposes of this section **the following terms shall have the following meanings:**

(a) "intimate part" means the naked genitals, pubic area, anus or female nipple of the person[~~.~~]**;**

(b) "disseminate" and "publish" shall have the same meaning as defined in section 250.40 of this title;

(c) "sexual conduct" shall have the same meaning as defined in subdivision ten of section 130.00 of this chapter; and

(d) "digitization" shall mean to alter an image in a realistic manner utilizing an image or images of a person, other than the person depicted, or computer generated images.

§ 1-a. Subdivision 2-a of section 245.15 of the penal law is REPEALED.

§ 2. Paragraph a of subdivision 2 of section 52-c of the civil rights law, as added by chapter 304 of the laws of 2020, is amended to read as follows:

a. A depicted individual shall have a cause of action against a person who, discloses, disseminates or publishes **or with intent to cause harm to the emotional, financial or physical welfare of another person, he or she threatens to disclose, disseminate or publish** sexually explicit material related to the depicted individual, and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation, disclosure, dissemination, or publication.

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