

A BILL

20-903

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

To criminalize the unauthorized disclosure of a sexual image of another person.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Criminalization of Non-Consensual Pornography Act of 2014”.

Sec. 2. Definitions.

For purposes of this act:

(1) “Disclose” means to transfer or exhibit to 5 or fewer persons.

(2) “Harm” means any injury, whether physical or nonphysical, including psychological, financial, or reputational injury.

(3) “Internet” means an electronically available platform by which sexual images can be disseminated to a wide audience, including social media, websites, and smartphone applications; provided, that the term “Internet” does not include a text message.

(4) “Private area” means the genitals, anus, or pubic area of a person, or the nipple of a developed female breast, including the breast of a transgender female.

(5) “Publish” means to transfer or exhibit to 6 or more individuals, or to make available for viewing by uploading to the Internet.

26 (6) "Sexual conduct" shall have the same meaning as provided in section 2(5) of
27 the District of Columbia Protection of Minors Act of 1982, effective March 9, 1983 (D.C. Law
28 4-173; D.C. Official Code § 22-3101(5)).

29 (7) "Sexual image" means a photograph, video, or other visual recording of an
30 unclothed private area or of sexual conduct.

31 Sec. 3. Unlawful disclosure.

32 (a) It shall be unlawful in the District of Columbia for a person to knowingly disclose one
33 or more sexual images of another identified or identifiable person when:

34 (1) The person depicted did not consent to the disclosure of the sexual image;

35 (2) There was an agreement or understanding between the person
36 depicted and the person disclosing that the sexual image would not be disclosed; and

37 (3) The person disclosed the sexual image with the intent to harm the ~~person~~
38 depicted person depicted or to receive financial gain.

39 (b) A person who violates this subsection shall be guilty of a misdemeanor and, upon
40 conviction, shall be fined not more than the amount set forth in section 101 of the Criminal Fine
41 Proportionality Amendment Act of 2012, approved June 11, 2013 (D.C. Law 19-317; D.C.
42 Official Code § 22-3571.01), imprisoned for not more than 180 days, or both.

43 Sec. 4. First-degree unlawful publication.

44 (a) It shall be unlawful in the District of Columbia for a person to knowingly publish one
45 or more sexual images of another identified or identifiable person when:

46 (1) The person depicted did not consent to the disclosure or publication of the

47 sexual image;

48 (2) There was an agreement or understanding between the person depicted and the
49 person publishing that that the sexual image would not be disclosed or published; and

50 (3) The person published the sexual image with the intent to harm the ~~person~~
51 ~~depicted~~ person depicted or to receive financial gain.

52 (b) A person who violates this subsection shall be guilty of a felony and, upon conviction,
53 shall be fined not more than the amount set forth in section 101 of the Criminal Fine
54 Proportionality Amendment Act of 2012, approved June 11, 2013 (D.C. Law 19-317; D.C.
55 Official Code § 22-3571.01), imprisoned for not more than 3 years, or both.

56 Sec. 5. Second degree unlawful publication.

57 (a) It shall be unlawful in the District of Columbia for a person to knowingly publish one
58 or more sexual images of another identified or identifiable person obtained from a third party or
59 other source when:

60 (1) The person depicted did not consent to the disclosure or publication of the
61 sexual image;

62 (2) The person published the sexual image with conscious disregard that the
63 sexual image was obtained as a result of a previous disclosure or publication of the sexual image
64 made with an intent to harm the person depicted.

65 (b) A person who violates this subsection shall be guilty of a misdemeanor and, upon
66 conviction, shall be fined not more than the amount set forth in section 101 of the Criminal Fine

67 Proportionality Amendment Act of 2012, approved June 11, 2013 (D.C. Law 19-317; D.C.
68 Official Code § 22-3571.01), imprisoned for not more than 180 days, or both.

69 Sec. 6. Exclusions.

70 (a) This act shall not apply to:

71 (1) Constitutionally protected activity; or

72 (2) A person disclosing or publishing a sexual image that resulted from the
73 voluntary exposure of the person depicted in a public or commercial setting.

74 (b) Nothing in this act shall be construed to impose liability on an interactive computer
75 service, as defined in Section 230(e)(2) of the Communications Act of 1934, approved February
76 8, 1995 (110 Stat. 139; 47 U.S.C. 230(f)(2)), for content provided by another person.

77 Sec. 7. Affirmative defenses.

78 It shall be an affirmative defense to a violation of section 3, 4, or 5 if the disclosure or
79 publication of a sexual image is made in the public interest, including the reporting of unlawful
80 conduct, the lawful and common practices of law enforcement, or legal proceedings.

81 Sec. 8. Jurisdiction.

82 A violation of section 3, 4, or 5 shall be deemed to be committed in the District of
83 Columbia if any part of the violation takes place in the District of Columbia, including either the
84 person depicted or the person who disclosed or published the sexual image was a resident of, or
85 located in, the District of Columbia at the time that the sexual image was made, disclosed, or
86 published.

87 Sec. 9. Fiscal impact statement.

ENGROSSED ORIGINAL

88 The Council adopts the fiscal impact statement in the committee report as the
89 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule
90 Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-106.02(c)(3)).

91 Sec. 10. Effective date.

92 This act shall take effect following approval by the Mayor (or in the event of veto by the
93 Mayor, action by the Council to override the veto), a 60-day period of congressional review as
94 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
95 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
96 Columbia Register.