

H.105

An act relating to disclosure of sexually explicit images without consent

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

(a) As used in this section:

\* \* \*

(6) “Sexual conduct” shall have the same meaning as in section 2821 of this title.

(7) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

~~(7)~~(8) “View” means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

\* \* \*

(e) No person shall intentionally photograph, film, or record in any format a person without that person’s knowledge and consent while that person is in a place where a person has a reasonable expectation of privacy and that person is engaged in a sexual act as defined in section 3251 of this title conduct.

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Sec. 2. 13 V.S.A. § 2606 is added to read:

§ 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT  
CONSENT

(a) As used in this section:

(1) “Disclose” includes transfer, publish, distribute, exhibit, or  
reproduce.

(2) “Minor” means a person less than 18 years of age.

(3) “Nude” means any one or more of the following uncovered parts of  
the human body:

(A) genitals;

(B) pubic area;

(C) buttocks; or

(D) female breast below the top of the areola.

(4) “Sexual conduct” shall have the same meaning as in section 2821 of  
this title.

(5) “Visual image” includes a photograph, film, videotape, recording, or  
digital reproduction.

(b)(1) No person shall knowingly disclose a visual image of an identifiable  
person who is nude or who is engaged in sexual conduct when the actor knows  
or should have known that the depicted person did not consent to the  
disclosure. A person may be identifiable from the image itself or information

displayed in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. Except as provided in subdivision (3) of this subsection, a person who violates this subdivision shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(2) No person shall violate subdivision (1) of this subsection with the intent to harm the person depicted in the image. Except as provided in subdivision (3) of this subsection, a person who violates this subdivision shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(3) A delinquency petition shall be filed in the Family Division of the Superior Court for a minor who violates subdivision (1) or (2) of this subsection. The minor may be referred to the Juvenile Diversion Program of the district in which the action is filed.

(4) No person shall violate subdivision (1) of this subsection with the intent of disclosing the image for profit or knowingly maintain an Internet website, online service, online application, or mobile application for the purpose of disclosing such images. A person who violates this subdivision shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(c) A person who maintains an Internet website, online service, online application, or mobile application that contains a visual image of an identifiable person who is nude or who is engaged in sexual conduct shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disclosing the visual image if requested by the depicted person.

(d) This section shall not apply to:

(1) Images involving voluntary nudity or sexual conduct in public or commercial settings, or in a place where a person does not have a reasonable expectation of privacy.

(2) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment.

(3) Disclosures of materials that constitute a matter of public concern.

(4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or information services or telecommunications services, as defined in 47 U.S.C. § 153, for content provided by another person. This subdivision shall not preclude other remedies available at law.

(e)(1) A plaintiff shall have a private cause of action against a defendant who violates subsection (b) of this section and causes the plaintiff emotional distress or economic loss.

(2) In addition to any other relief available at law, the Court may order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the image. The Court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2015.