

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 105 entitled

3 “An act relating to disclosure of sexually explicit images without consent”

4 respectfully reports that it has considered the same and recommends that the

5 Senate propose to the House that the bill be amended by striking out all after

6 the enacting clause and inserting in lieu thereof the following:

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

8 § 2605. VOYEURISM

9 (a) As used in this section:

10 * * *

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

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

15 ~~(7)~~(8) “View” means the intentional looking upon another person for
16 more than a brief period of time, in other than a casual or cursory manner, with
17 the unaided eye or a device designed or intended to improve visual acuity.

18 * * *

19 (e) No person shall intentionally photograph, film, or record in any format

20 a person without that person’s knowledge and consent while that person is in a

1 place where a person has a reasonable expectation of privacy and that person is
2 engaged in a sexual act as ~~defined in section 3251 of this title~~ conduct.

3 * * *

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

5 § 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT
6 CONSENT

7 (a) As used in this section:

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

10 (2) “Harm” means physical injury, financial injury, or serious emotional
11 distress.

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

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

15 (A) genitals;

16 (B) pubic area;

17 (C) anus; or

18 (D) post-pubescent female nipple.

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

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

3 (b)(1) A person violates this section if he or she knowingly discloses a
4 visual image of an identifiable person who is nude or who is engaged in sexual
5 conduct, without his or her consent, with the intent to harm, harass, intimidate,
6 threaten, or coerce the person depicted, and the disclosure would cause a
7 reasonable person to suffer harm. A person may be identifiable from the
8 image itself or information offered in connection with the image. Consent to
9 recording of the visual image does not, by itself, constitute consent for
10 disclosure of the image. A person who violates this subdivision (1) shall be
11 imprisoned not more than two years or fined not more than \$2,000.00, or both.

12 (2) A person who violates subdivision (1) of this subsection with the
13 intent of disclosing the image for financial profit and causes harm to the person
14 depicted shall be imprisoned not more than five years or fined not more than
15 \$10,000.00, or both.

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

1 (d) This section shall not apply to:

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

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

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

9 (4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or
10 information services or telecommunications services, as defined in 47 U.S.C.
11 § 153, for content solely provided by another person. This subdivision shall
12 not preclude other remedies available at law.

13 (e)(1) A plaintiff shall have a private cause of action against a defendant
14 who knowingly discloses, without the plaintiff's consent, an identifiable visual
15 image of the plaintiff while he or she is nude or engaged in sexual conduct and
16 the disclosure causes the plaintiff harm.

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

1 Sec. 3. 9 V.S.A. chapter 117 is redesignated to read:

2 CHAPTER 117. INTERNET ~~SALES~~ COMMERCE

3 Sec. 4. 9 V.S.A. § 4191 is added to read:

4 § 4191. REMOVAL OF BOOKING PHOTOGRAPHS FROM THE
5 INTERNET; FEES PROHIBITED

6 (a) As used in this section, “booking photograph” means any photograph
7 taken by a law enforcement office or other authorized person pursuant to
8 20 V.S.A. chapter 117.

9 (b) A person who posts or otherwise disseminates a booking photograph on
10 the Internet shall not solicit or accept a fee or other consideration to remove,
11 delete, correct, modify, or refrain from posting or disseminating the booking
12 photograph if requested by the depicted person.

13 (c) A person who violates subsection (b) of this section shall be assessed a
14 civil penalty of not more than \$1,000.00 for the first violation and not more
15 than \$2,500.00 for each subsequent violation.

16 (d) A person who sustains damages or injury as a result of a violation of
17 this section may bring an action in Superior Court for damages, injunctive
18 relief, punitive damages in the case of a willful violation, and reasonable costs
19 and attorney’s fees. The Court may issue an award for the person’s actual
20 damages or \$500.00 for a first violation, or \$1,000.00 for each subsequent
21 violation, whichever is greater. This subsection shall not limit any other

1 claims a person who sustains damages or injury as a result of a violation of this
2 section may have under applicable law.

3 (e) This section shall not be construed to limit a person’s liability under any
4 other law.

5 Sec. 5. 4 V.S.A. § 1102 is amended to read:

6 § 1102. JUDICIAL BUREAU; JURISDICTION

7 * * *

8 (b) The Judicial Bureau shall have jurisdiction of the following matters:

9 * * *

10 (26) Violations of 9 V.S.A. § 4191 relating to the solicitation or
11 acceptance of a fee to remove a booking photograph from the Internet.

12 * * *

13 Sec. 6. 20 V.S.A. § 2358(b)(1) and (2), as amended by 2014 Acts and
14 Resolves No. 141, Sec. 5, are amended to read:

15 (1) Level I certification.

16 (A) An applicant for certification as a Level I law enforcement
17 officer shall first complete an off-site training program prior to entering and
18 completing Level I basic training. Level I basic training shall include training
19 to react to the circumstances described in subdivision (B) of this
20 subdivision (1).

1 (B)(i) The scope of practice of a Level I law enforcement officer
2 shall be limited to security, transport, vehicle escorts, and traffic control, as
3 those terms are defined by the Council by rule, except that a Level I officer
4 may react in the following circumstances if the officer determines that it is
5 necessary to do any of the following:

6 (I) protect an individual in the presence of the officer from the
7 imminent infliction of serious bodily injury;

8 (II) provide immediate assistance to an individual who has
9 suffered or is threatened with serious bodily injury;

10 (III) detain or arrest an individual ~~whom~~ who the officer
11 reasonably believes has committed a crime in the presence of the officer; or

12 (IV) detain or arrest an individual ~~whom~~ who the officer
13 reasonably believes has committed a felony under Vermont law.

14 (ii) If a Level I officer reacts to any of the circumstances described
15 in subdivision (i) of this subdivision (B), he or she shall call upon an officer
16 certified to respond and assume law enforcement authority over the incident.

17 (2) Level II certification.

18 (A) An applicant for certification as a Level II law enforcement
19 officer shall first complete Level II basic training and may then become
20 certified in a specialized practice area as set forth in subdivision (B)(ii) of this
21 subdivision (2). Level II basic training shall include training to respond to

1 calls regarding alleged crimes in progress and to react to the circumstances
2 described in subdivision (B)(iii) of this subdivision (2).

3 (B)(i) Except as provided in subdivisions (ii) and (iii) of this
4 subdivision (B), the scope of practice of a Level II law enforcement officer
5 shall be limited to investigating the following matters:

6 (I) 7 V.S.A. § 658 (sale or furnishing to minors; enabling
7 consumption by minors);

8 (II) 13 V.S.A. chapter 7 (advertisements);

9 ~~(H)~~(III) 13 V.S.A. chapter 8 (humane and proper treatment of
10 animals);

11 (IV) 13 V.S.A. §§ 505 (fourth degree arson), 508 (setting fires),
12 and 509 (attempts);

13 ~~(H)~~(V) 13 V.S.A. chapter 19, subchapter 1 (riots);

14 ~~(IV)~~(VI) 13 V.S.A. §§ 1022 (noise in the nighttime), 1023
15 (simple assault), 1025 (recklessly endangering another person), 1026
16 (disorderly conduct), and 1027 (disturbing peace by use of telephone or other
17 electronic communications), 1030 (violation of an abuse prevention order, an
18 order against stalking or sexual assault, or a protective order concerning
19 contact with a child), 1031 (interference with access to emergency services),
20 1042 (domestic assault), and 1062 (stalking);

21 ~~(V)~~(VII) 13 V.S.A. chapter 35 (escape);

- 1 ~~(VI)~~(VIII) 13 V.S.A. chapter 41 (false alarms and reports);
- 2 ~~(VII)~~(IX) 13 V.S.A. chapter 45 (flags and ensigns);
- 3 ~~(VIII)~~(X) 13 V.S.A. chapter 47 (frauds);
- 4 ~~(IX)~~(XI) 13 V.S.A. chapter 49 (fraud in commercial
- 5 transactions);
- 6 ~~(X)~~(XII) 13 V.S.A. chapter 51 (gambling and lotteries);
- 7 ~~(XI)~~(XIII) 13 V.S.A. chapter 57 (larceny and embezzlement),
- 8 except for subchapter 2 (embezzlement);
- 9 ~~(XII)~~(XIV) 13 V.S.A. chapter 67 (public justice and public
- 10 officers);
- 11 ~~(XIII)~~(XV) 13 V.S.A. chapter 69 (railroads);
- 12 ~~(XIV)~~(XVI) 13 V.S.A. chapter 77 (trees and plants);
- 13 ~~(XV)~~(XVII) 13 V.S.A. chapter 81 (trespass and malicious
- 14 injuries to property);
- 15 ~~(XVI)~~(XVIII) 13 V.S.A. chapter 83 (vagrants);
- 16 ~~(XVII)~~(XIX) 13 V.S.A. chapter 85 (weapons);
- 17 ~~(XVIII)~~(XX) 18 V.S.A. §§ 4230(a), 4230c, and 4230d
- 18 (marijuana possession);
- 19 (XXI) 18 V.S.A. § 4231(a) (cocaine possession);
- 20 (XXII) 18 V.S.A. § 4232(a) (LSD possession);
- 21 (XXIII) 18 V.S.A. § 4233(a) (heroin possession);

- 1 (XXIV) 18 V.S.A. § 4234(a) (depressant, stimulant, or narcotic
2 drug possession);
- 3 (XXV) 18 V.S.A. § 4234a(a) (methamphetamine possession);
- 4 (XXVI) 18 V.S.A. § 4235(b) (hallucinogenic drug possession);
- 5 (XXVII) 18 V.S.A. § 4235a(a) (ecstasy possession);
- 6 (XXVIII) 18 V.S.A. § 4476 (drug paraphernalia offenses);
- 7 (XXIX) 21 V.S.A. § 692(c)(2) (criminal violation of stop-work
8 order);
- 9 (XXX) any misdemeanor set forth in Title 23 of the Vermont
10 Statutes Annotated, except for 23 V.S.A. chapter 13, subchapter 13 (drunken
11 driving), 23 V.S.A. § 3207a (snowmobiling under the influence),
12 23 V.S.A. § 3323 (boating under the influence), or 23 V.S.A. § 3506(b)(8)
13 (operating an all-terrain vehicle under the influence);
- 14 (XXXI) any motor vehicle accident that includes property
15 damage and injuries, as permitted by the Council by rule;
- 16 (XXXII) any matter within the jurisdiction of the Judicial
17 Bureau as set forth in 4 V.S.A. § 1102;
- 18 ~~(XIX)~~(XXXIII) municipal ordinance violations;
- 19 ~~(XX)~~(XXXIV) any matter within the jurisdiction of a game
20 warden or deputy game warden as set forth in 10 V.S.A. chapter 103,
21 subchapter 4 (game wardens); and

1 ~~(XXI)~~(XXXV) any matter within the scope of practice of a
2 Level I law enforcement officer.

3 (ii) In addition to the scope of practice permitted under
4 subdivision (i) of this subdivision (B), a Level II law enforcement officer may
5 also practice in additional areas approved in writing by the Council based on a
6 special certification or training approved by the Council ~~pursuant to rules~~
7 ~~adopted by the Council.~~

8 (iii) Notwithstanding the limitations set forth in subdivisions (i)
9 and (ii) of this subdivision (B), a Level II officer may respond to calls
10 regarding alleged crimes in progress and may react in the following
11 circumstances if the officer determines that it is necessary to do any of the
12 following:

13 (I) protect an individual in the presence of the officer from the
14 imminent infliction of serious bodily injury;

15 (II) provide immediate assistance to an individual who has
16 suffered or is threatened with serious bodily injury;

17 (III) detain or arrest an individual ~~whom~~ who the officer
18 reasonably believes has committed a crime in the presence of the officer; or

19 (IV) detain or arrest an individual ~~whom~~ who the officer
20 reasonably believes has committed a felony under Vermont law.

1 (iv) If a Level II officer responds to calls regarding alleged crimes
2 in progress or reacts to any of the circumstances described in subdivision (iii)
3 of this subdivision (B) and that response or reaction is outside the scope of his
4 or her scope of practice, he or she shall call upon an officer certified to respond
5 and assume law enforcement authority over the incident.

6 Sec. 7. EFFECTIVE DATE

7 This act shall take effect on July 1, 2015.

8 and that after passage the title of the bill be amended to read: “An act relating
9 to disclosure of sexually explicit images without consent, charging fees for
10 removing booking photographs from the Internet, and expanding the scope of
11 practice of Level II certified law enforcement officers”.

12

13

1 (Committee vote: _____)

2

3

Senator _____

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FOR THE COMMITTEE