



## **New York State Law Banning Unlawful Dissemination or Publication of an Intimate Image**

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On July 23, 2019, the Governor signed into law a bill<sup>1</sup> creating the new crime of Unlawful Dissemination or Publication of an Intimate Image (Penal Law §245.15), a class A misdemeanor.

Often referred to as “revenge porn,” this conduct has become a more common act as taking and sharing photos and videos has become easier and less expensive. The impact on those who are exposed in this manner is devastating.

This crime occurs when:

- “(1)(a) with intent to cause harm to the emotional, financial or physical welfare of another person, he or she intentionally disseminates or publishes a still or video image of such other person, who is identifiable 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 Penal Law section 130.00(10) with another person; **and**
- (b) such still or video image was taken under circumstances when the person depicted had a reasonable expectation that the image would remain private and the actor knew or reasonably 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 image was taken.

The law defines “intimate part” to mean “the naked genitals, pubic area, anus or female nipple of the person.”

The definitions of “disseminate” and “publish” are the same as from Section 250.40:

- “‘Disseminate’ means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person.”
- “‘Publish’ means to (a) disseminate, as defined in subdivision five of this section, with the intent that such image or images be disseminated to ten or more persons; or (b) disseminate with the intent that such images be sold by another person; or (c) post, present, display, exhibit, circulate, advertise or allows access, electronically or otherwise, so as to make an image or images available to the public; or (d) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible, electronically or otherwise and to make such image or images available to the public.”

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<sup>1</sup> Chapter 109 of the Laws of 2019

The law does not apply to reporting unlawful conduct, dissemination within the lawful and common practices of law enforcement, legal proceedings, or medical treatment. It does not apply to “voluntary exposure in a public or commercial setting [or] dissemination or publication of an intimate image made for legitimate public purpose.”

The law also amends the State Civil Rights Law (a new Civil Rights Law §52-b) to allow for a private right of action (civil lawsuit) using the same definitions. The law makes reference to Section 230 of the Communications Decency Act, which offers internet service providers immunity from lawsuits for content shared by users that is not created by the internet site.

This law is intended to penalize the unauthorized sharing of sexually intimate images, often created during the course of an intimate relationship, yet later distributed without the consent of the depicted parties. Such images are often referred to as “revenge porn” or “non-consensual pornography”. Inasmuch as this issue has been especially pronounced among high school and college age individuals, campuses should train University Police/Public Safety on the elements of the new law, train Student Conduct and Student Affairs (since Codes generally prohibit actions that violate Federal, State, or local law), and include this new law and its protections and obligations in prevention training for students and employees.

This law takes effect on September 21, 2019.