

SPONSOR: Rep. Bennett & Rep. Keeley, & Rep. Walker, & Sen. Peterson
Reps. Dukes, Hudson, Jaques, Paradee, Ramone, Scott, B. Short, M. Smith, Viola, K. Williams; Sens. Poore, Townsend

HOUSE OF REPRESENTATIVES

147th GENERAL ASSEMBLY

HOUSE BILL NO. 260
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO VIOLATION OF PRIVACY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 1335, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1335. Violation of privacy; class A misdemeanor; class G felony.

(a) A person is guilty of violation of privacy when, except as authorized by law, the person:

(8) Knowingly installs an electronic or mechanical location tracking device in or on a motor vehicle without the consent of the registered owner, lessor or lessee of said vehicle. This paragraph shall not apply to the lawful use of an electronic tracking device by a law enforcement officer, nor shall it apply to a parent or legal guardian who installs such a device for the purpose of tracking the location of a minor child thereof. ~~.~~ ; or

(9) Knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a visual depiction of a person who is nude, or who is engaging in sexual conduct, when the person knows or should have known that the reproduction, distribution, exhibition, publication, transmission, or other dissemination was without the consent of the person depicted and that the visual depiction was created or provided to the person under circumstances in which the person depicted has a reasonable expectation of privacy.

a. For the purposes of paragraphs (a)(9), (a)(9)b., and (a)(9)d.:

1. “Nude” means any one or more of the following uncovered parts of the human body, or parts of the human body visible through less than opaque clothing:

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A. the genitals;

B. the pubic area;

C. the buttocks;

D. any portion of the female breast below the top of the areola.

2. "Personally identifiable information" means any information about a person that permits the physical or online identifying or contacting of a person. The term includes either a person's face or a person's first and last name or first initial and last name in combination with any one or more of the following:

A. a home or other physical address, including street name and name of a city or town;

B. an e-mail address;

C. a telephone number;

D. geolocation data;

E. any other identifier that permits the physical or online identifying or contacting of a person.

3. 'Sexual contact' means any touching by one person of the uncovered anus, breast, buttocks, or genitalia of another person or any touching of a person with the uncovered anus, breasts, buttocks or genitalia of another person.

4. 'Sexual intercourse' means any act of physical union of the genitalia or anus of a person with the mouth, anus, or genitalia of another person.

5. 'Sexual penetration' means the placement of an object inside the anus or vagina of a person or the placement of a sexual device inside the mouth of a person.

6. 'Sexual conduct' means actual or simulated:

A. Sexual contact;

B. Sexual intercourse;

C. Sexual penetration;

D. Masturbation;

E. Bestiality;

F. Sadism;

G. Masochism; or

H. Explicit representations of the defecation or urination functions.

7. "Visual depiction" shall have the meaning as used in § 1100 of this title.

b. A person who has, within the context of a private or confidential relationship, consented to the capture or possession of a visual depiction of the person when nude or when engaging in sexual conduct retains a reasonable expectation of privacy with regard to the reproduction, distribution, exhibition, publication, transmission, or other dissemination of the visual depiction beyond that relationship.

c. For the purposes of paragraph (a)(9), each of the following shall be an aggravating factor and shall be alleged in the charging information or indictment and constitute an element of the offense:

1. The actor knowingly obtains such visual depictions without the consent of the person depicted.

A. A violation of paragraph (a)(9)c.(1) occurs when a person commits a theft as provided for in §§ 841, 842, 843, or 844 of this title or obtains such visual depictions by committing unauthorized access to a computer system as provided for in § 932 of this title or by unauthorized access to electronic mail or an electronic mail service provider as defined in § 931.

B. A violation of paragraph (a)(9)c.(1) consistent with § 932 of this title is subject to the venue provision in § 940 of this title.

2. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions for profit.

3. The actor knowingly maintains an internet website, online service, online application, or mobile application for the purpose of reproducing, distributing, exhibiting, publishing, transmitting, or otherwise disseminating such visual depictions.

4. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions with the intent to harass, annoy, or alarm the person depicted and such conduct would cause a reasonable person to suffer significant mental anguish or distress.

5. The actor pairs such visual depiction with personally identifiable information of the person depicted.

d. For purposes of paragraph (a)(9), the fact the actor committed this offense within 5 years of a prior conviction for a violation of paragraph (a)(9) shall be an aggravating factor for sentencing purposes only and, therefore, this fact is not to be alleged in the charging information or indictment and does not constitute an element of the offense.

e. In addition to when the consent of the person depicted is given, paragraphs (a)(9) and (a)(9)b. do not apply to any of the following:

1. When the visual depiction is of an individual less than 18 years of age and does not violate §§ 1108, 1109, or 1111, or any similar provision of this title, and the reproduction, distribution, exhibition, publication, transmission, or other dissemination is not for commercial purposes.

2. When the visual depiction is reproduced, distributed, exhibited, published, transmitted, or otherwise disseminated in the course of lawful and common practices of a law-enforcement officer, the reporting of unlawful conduct, legal proceedings, and medical treatment procedures.

3. When the person depicted has consented to the reproduction, distribution, exhibition, transmission, or other dissemination of the visual depiction for commercial purposes.

4. When the person depicted has voluntarily appeared nude in public or voluntarily engages in sexual conduct in public.

5. When the reproduction, distribution, exhibition, publication, transmission, or other dissemination serves a legitimate public purpose.

f. Nothing within paragraph (a)(9) shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. § 230(f)(2), or an information service or telecommunications service, as defined in 47 U.S.C. § 153, for content provided by the actor or another person.

(c) Any violation of paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5) ~~or (a)(8)~~ , (a)(8), or (a)(9) of this section shall be a class A misdemeanor. Any violation of paragraph (a)(6) ~~or (a)(7)~~ , (a)(7), (a)(9)c., or (a)(9)d. of this section shall be a class G felony.

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