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

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 B misdemeanor; 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) Without the consent of the person depicted, knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a visual depiction of a person who is nude or a visual depiction of a person who is engaging in sexual contact or sexual intercourse, or both.

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:

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 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;

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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" shall have the meaning as used in § 761 of this title except that the person depicted need not be engaging in sexual contact with the actor for the definition in § 761 of this title to apply and sexual contact does not include touching when covered by clothing.

4. "Sexual intercourse" shall have the meaning as used in § 761 of this title.

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

6. "Without the consent" shall have the meaning as used in the term "without consent" in § 761 of this title and shall also mean the lack of specific agreement, approval, or assent to reproducing, distributing, exhibiting, publishing, transmitting, or otherwise disseminating such visual depictions.

b. 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)(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)(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.

c. 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.

d. 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. A law enforcement officer or agent acting in his or her official capacity in connection with the investigation or prosecution of a crime.

3. A person who is not the actor and who reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates the visual depiction to a law enforcement officer or agency for the purpose of reporting a crime or for the purpose of assisting a law enforcement officer or agent in connection with the investigation or prosecution of a crime.

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

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

SYNOPSIS

This bill adds to the existing crime of Violation of Privacy additional prohibited conduct related to the non-consensual dissemination of visual depictions containing nudity or sexual acts, conduct popularly referred to as "revenge porn". "Revenge porn" typically refers to the situation where visual depictions are consensually given to an intimate partner who, after the end of the relationship, later disseminates them without the consent of the person depicted. As a result, the person depicted unwillingly becomes sexual entertainment for strangers and the person's career and standing within the community can be negatively impacted.

The bill details six situations that would aggravate this offense: (1) obtaining the visual depiction without the consent of the person depicted, (2) committing the offense for profit, (3) maintaining an internet website, online service, online application, or mobile application for the purpose of committing this offense, (4) committing this offense with the intent to harass, annoy, or alarm the person depicted, (5) committing this offense and pairing the visual depiction with personally identifiable information of the person depicted, and (6) committing this offense within 5 years of a prior conviction for this offense.

This bill makes clear that in addition to when the consent of the person depicted is given, certain currently lawful conduct is not intended to be made unlawful by the addition of this paragraph to the crime of Violation of Privacy.

This bill further amends the existing crime of Violation of Privacy to make this offense a class B misdemeanor and to make this offense, when aggravated, a class G felony.