

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2107 Session of
2014

INTRODUCED BY MURT, TOOIL, CALTAGIRONE, MILLARD, MCGEEHAN,
PASHINSKI, KINSEY, FARINA, GODSHALL, PARKER, ROZZI, HEFFLEY,
FLECK, C. HARRIS, DeLUCA, COHEN, WATSON, GILLEN, DAVIS AND
READSHAW, MARCH 18, 2014

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,
JUNE 24, 2014

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in definition of sexual offenses, providing for
4 unlawful dissemination of intimate image; and, in particular
5 rights and immunities, providing for damages in actions for
6 unlawful dissemination of intimate image.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Title 18 of the Pennsylvania Consolidated

10 Statutes is amended by adding a section to read:

11 § 3131. Unlawful dissemination of intimate image.

12 (a) Offense defined.--Except as provided in sections 5903

13 (relating to obscene and other sexual material and

14 performances), 6312 (relating to sexual abuse of children) and

15 6321 (relating to transmission of sexually explicit images by

16 minor), a person commits the offense of unlawful dissemination

17 of intimate image if, with intent to cause emotional distress to <--

18 the person depicted, the person disseminates a visual depiction

1 ~~of another person~~ HARASS, ANNOY OR ALARM A CURRENT OR FORMER <--
2 ~~SEXUAL OR INTIMATE PARTNER, THE PERSON DISSEMINATES A VISUAL~~
3 ~~DEPICTION OF THE CURRENT OR FORMER SEXUAL OR INTIMATE PARTNER in~~
4 ~~a state of nudity or engaged in sexual conduct.~~

5 (b) Defense.--It is a defense to a prosecution under this
6 section that the actor disseminated the visual depiction with
7 the consent of the person depicted.

8 ~~(c) Grading.--A person who violates subsection (a) commits a~~ <--
9 ~~misdemeanor of the third degree and shall, upon conviction, be~~
10 ~~sentenced to pay a fine of \$1,000 or to imprisonment for not~~
11 ~~more than six months, or both. Each violation shall constitute a~~
12 ~~separate offense.~~ AN OFFENSE UNDER SUBSECTION (A) SHALL BE: <--

13 (1) A MISDEMEANOR OF THE FIRST DEGREE, WHEN THE PERSON
14 DEPICTED IS A MINOR.

15 (2) A MISDEMEANOR OF THE SECOND DEGREE, WHEN THE PERSON
16 DEPICTED IS NOT A MINOR.

17 (d) Territorial applicability.--A person may be convicted
18 under the provisions of this section if the victim or the
19 offender is located within this Commonwealth.

20 (e) Nonapplicability.--Nothing in this section shall be
21 construed to apply to a law enforcement officer engaged in the
22 performance of the law enforcement officer's official duties.

23 (f) Concurrent jurisdiction to prosecute.--In addition to
24 the authority conferred upon the Attorney General by the act of
25 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
26 Attorneys Act, the Attorney General shall have the authority to
27 investigate and to institute criminal proceedings for any
28 violation of this section or any series of violations involving
29 more than one county of this Commonwealth or another state. No
30 person charged with a violation of this section by the Attorney

1 General shall have standing to challenge the authority of the
2 Attorney General to investigate or prosecute the case, and, if a
3 challenge is made, the challenge shall be dismissed, and no
4 relief shall be made available in the courts of this
5 Commonwealth to the person making the challenge.

6 (g) Definitions.--As used in this section, the following
7 words and phrases shall have the meanings given to them in this
8 subsection unless the context clearly indicates otherwise:

9 "Emotional distress." As defined in section 2709.1 (relating <--
10 to stalking).

11 "Law enforcement officer." Any officer of the United States,
12 of the Commonwealth or political subdivision thereof, or of
13 another state or subdivision thereof, who is empowered to
14 conduct investigations of or to make arrests for offenses
15 enumerated in this title or an equivalent crime in another
16 jurisdiction, and any attorney authorized by law to prosecute or
17 participate in the prosecution of such offense.

18 "Nudity." As defined in section 5903(e) (relating to obscene
19 and other sexual materials and performances).

20 "Sexual conduct." As defined in section 5903(e) (relating to
21 obscene and other sexual materials and performances).

22 "Visual depiction." As defined in section 6321 (relating to
23 transmission of sexually explicit images by minor).

24 Section 2. Title 42 is amended by adding a section to read:
25 § 8316.1. Damages in actions for unlawful dissemination of
26 intimate image.

27 (a) Cause of action established.--A person may bring a civil
28 cause of action based upon unlawful dissemination of intimate
29 image, as defined in 18 Pa.C.S. § 3131 (relating to unlawful
30 dissemination of intimate image), in order to recover damages

1 for any loss or injury sustained as a result of the violation.

2 (b) Parties authorized to bring action.--An action may be
3 brought by a natural person or a guardian of the natural person,
4 if the person is incompetent.

5 (c) Damages.--A court of competent jurisdiction may award
6 damages as set forth in this subsection. In determining the
7 extent of injury, the court shall consider that dissemination of
8 an intimate image may cause long-term or permanent injury. The
9 court may award:

10 (1) Actual damages arising from the incident or \$500,
11 whichever is greater. Damages include loss of money,
12 reputation or property, whether real or personal. The court
13 may, in its discretion, award up to three times the actual
14 damages sustained, but not less than \$500.

15 (2) Reasonable attorney fees and court costs.

16 (3) Additional relief the court deems necessary and
17 proper.

18 (d) Other remedies preserved.--Nothing in this section shall
19 be construed to limit the ability of a person to receive
20 restitution under 18 Pa.C.S. § 1106 (relating to restitution for
21 injuries to person or property).

22 (e) Nonapplicability.--The provisions of this section shall
23 not be applicable to a law enforcement officer engaged in the
24 law enforcement officer's official duties.

25 (f) Definition.--As used in this section, the term "law
26 enforcement officer" means any officer of the United States, of
27 the Commonwealth or political subdivision thereof, or of another
28 state or subdivision thereof, who is empowered to conduct
29 investigations of or to make arrests for offenses enumerated in
30 18 Pa.C.S. (relating to crimes and offenses), or an equivalent

1 crime in another jurisdiction, and any attorney authorized by
2 law to prosecute or participate in the prosecution of such
3 offense.

4 Section 3. This act shall take effect in 60 days.