

2018 -- H 7452 SUBSTITUTE A

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LC003319/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO CRIMINAL OFFENSES - ELECTRONIC IMAGING DEVICES

Introduced By: Representatives Craven, Marszalkowski, O'Brien, Ucci, and Fogarty

Date Introduced: February 02, 2018

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 11-64-1 of the General Laws in Chapter 11-64 entitled "Electronic
2 Imaging Devices" is hereby amended to read as follows:

3 **11-64-1. Definitions.**

4 (1) For the purposes of this section the following definitions apply:

5 (a) "Disseminate" means to make available by any means to any person.

6 **(b) "Harm" means bodily injury, emotional distress, financial loss, or reputational injury.**

7 **(c) "Identifiable" means identifiable by any person from the visual image or information**
8 **offered in connection with the visual material.**

9 ~~(b)~~(d) "Imaging device" means any electronic instrument capable of capturing, recording,
10 storing or transmitting visual images.

11 ~~(e)~~(e) "Intimate areas" means the naked or undergarment clad genitals, pubic area,
12 buttocks, or any portion of the female breast below the top of the areola of a person which the
13 person intended to be protected from public view.

14 ~~(f)~~(f) "Legal entity" means any partnership, firm, association, corporation or any agent or
15 servant thereof.

16 ~~(g)~~(g) "Publish" means to:

17 (i) Disseminate with the intent that such image or images be made available by any
18 means to any person or other legal entity;

19 (ii) Disseminate with the intent such images be sold by another person or legal entity;

1 (iii) Post, present, display, exhibit, circulate, advertise or allow access by any means, so
2 as to make an image or images available to the public; or

3 (iv) Disseminate with the intent that an image or images be posted, presented, displayed,
4 exhibited, circulated, advertised or made accessible by any means, and to make such images
5 available to the public.

6 ~~(h)~~ "Sell" means to disseminate to another person, or to publish, in exchange for
7 something of value.

8 (i) "Sexually explicit conduct" means actual:

9 (i) Graphic sexual intercourse, including genital-genital; oral-genital, anal-genital, or
10 oral-anal, or lascivious sex where the genitals, or pubic area of any person is exhibited;

11 (ii) Bestiality;

12 (iii) Masturbation; or

13 (iv) Sadistic or masochistic abuse.

14 (j) "Visual image" means any photograph, film, video, or digital image or recording,
15 whether produced by electronic, mechanical or other means.

16 SECTION 2. Chapter 11-64 of the General Laws entitled "Electronic Imaging Devices"
17 is hereby amended by adding thereto the following section:

18 **11-64-3. Unauthorized dissemination of indecent material.**

19 (a) A person is guilty of unauthorized dissemination of a sexually explicit visual image of
20 another person when the person intentionally, by any means, disseminates, publishes or sells:

21 (1) A visual image that depicts another identifiable person eighteen (18) years or older
22 engaged in sexually explicit conduct or of the intimate areas of that person;

23 (2) The visual image was made, captured, recorded, or obtained under such
24 circumstances in which a reasonable person would know or understand that the image was to
25 remain private;

26 (3) The visual image was disseminated, published or sold without the consent of the
27 depicted person; and

28 (4) With knowledge or with reckless disregard for the likelihood that the depicted person
29 will suffer harm, or with the intent to harass, intimidate, threaten or coerce the depicted person.

30 (b) Subsection (a) of this section shall not apply to:

31 (1) A visual image that involves voluntary exposure of intimate areas or of sexually
32 explicit conduct in a public or commercial setting, or in a place where a person does not have a
33 reasonable expectation of privacy;

34 (2) Dissemination made in the public interest, scientific activities, or educational

1 activities:

2 (3) Dissemination made in the course of a lawful public proceeding;

3 (4) Dissemination made for purposes of law enforcement, criminal reporting, corrections,
4 legal proceedings, the reporting of unlawful conduct, or for medical treatment; or

5 (5) Dissemination of an image that constitutes a matter of public concern, such as a
6 matter related to a newsworthy event or related to a public figure.

7 (c) For the purposes of this section, "intimate areas" means the naked genitals, pubic area,
8 buttocks, or any portion of the female breast below the top of the areola of a person which the
9 person intended to protect from public view.

10 (d) A first violation of this section shall be a misdemeanor and, upon conviction, subject
11 to imprisonment of not more than one year, a fine of not more than one thousand dollars (\$1,000),
12 or both. A second or subsequent violation of this section shall be a felony and, upon conviction
13 subject to imprisonment for not more than three (3) years, a fine of not more than three thousand
14 dollars (\$3,000), or both.

15 (e) Any person who intentionally threatens to disclose any visual image described in
16 subsection (a) of this section and makes the threat to obtain a benefit in return for not making the
17 disclosure or in connection with the threatened disclosure, shall be guilty of a felony and, upon
18 conviction, be subject to imprisonment for up to five (5) years, a fine of up to five thousand
19 dollars (\$5,000), or both.

20 (f) Any person who demands payment of money, property, services or anything else of
21 value from a person in exchange for removing any visual image describe in subsection (a) of this
22 section from public view shall be guilty of a felony and, upon conviction, be subject to
23 imprisonment for up to five (5) years, a fine of up to five thousand dollars (\$5,000), or both.

24 (g) Those in violation of this section shall not be subject to sex offender registration
25 requirements as set forth in chapter 37.1 of title 11 entitled "Sexual Offender Registration and
26 Community Notification Act."

27 (h) A violation of this section is committed within this state if any conduct that is an
28 element of the offense, or any harm to the depicted person resulting from the offense, occurs in
29 this state.

30 (i) Nothing in this section shall be construed to impose liability on an interactive
31 computer service, as defined in 47 U.S.C. § 230(f)(2), an information service, as defined in 47
32 U.S.C. § 153, or a telecommunications service, as defined in § 44-18-7.1, for content provided by
33 another person.

1 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would define sexually explicit conduct and visual image and would prohibit any
2 person from disseminating any indecent image of another person without authorization for the
3 purpose of harassing, intimidating, threatening another person if that person is eighteen (18) years
4 of age or older and is identifiable from the image. Exceptions would include dissemination for
5 lawful purposes, legal proceedings, medical or educational activities. Violation of this section
6 would be a misdemeanor for a first offense and a felony for subsequent offenses. It would also
7 make demanding payment for not disclosing or refusing to remove the image from public view a
8 felony.

9 This act would take effect upon passage.

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