

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H

D

HOUSE BILL 591
Senate Judiciary Committee Substitute Adopted 6/27/23
PROPOSED SENATE COMMITTEE SUBSTITUTE H591-CSCE-37 [v.3]
05/06/2024 01:23:07 PM

Short Title: Modernize Sex Crimes.

(Public)

Sponsors:

Referred to:

April 13, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH SEXUAL EXTORTION OFFENSES, UPDATE OFFENSES
3 RELATED TO SEXUAL EXPLOITATION OF A MINOR, UPDATE SEX OFFENDER
4 AND PUBLIC PROTECTION REGISTRATION PROGRAMS, AND TO CLARIFY THE
5 OFFENSE OF DISCLOSURE OF PRIVATE IMAGES.

6
7 The General Assembly of North Carolina enacts:

8
9 **ESTABLISH SEXUAL EXTORTION OFFENSES**

10 **SECTION 1.** Article 26 of Chapter 14 of the General Statutes is amended by adding
11 a new section to read:

12 "**§ 14-202.7. Sexual extortion; aggravated sexual extortion.**

13 (a) Defintions. – The following definitions apply in this section:

14 (1) Adult – A person 18 years or older.

15 (2) Disclose – To transfer, publish, distribute, or reproduce.

16 (3) Image – A photograph, film, videotape, recording, live transmission, digital
17 or computer-generated visual depiction, including a realistic visual depiction
18 created, adapted or modified by technological means, including algorithms or
19 artificial intelligence, such that a reasonable person would believe the image
20 depicts an identifiable individual, or any other reproduction that is created,
21 adapted, or modified made by electronic, mechanical, or other means.

22 (4) Immediate family member – As defined in Section 14-43.17.

23 (5) Individual with a disability – As defined in Section 14-32.1.

24 (6) Minor – A person who has not reached the age of 18 years.

25 (7) Private image – An image depicting any of the following:

26 a. Male or female genitals.

27 b. Male or female pubic area.

28 c. Male or female anus.

29 d. The nipple of a female over the age of 12.

30 e. Vaginal, anal, or oral intercourse, whether actual or simulated, normal
31 or perverted.

32 f. Masturbation, excretory functions, or lewd exhibition of uncovered
33 genitals.



* H 5 9 1 - C S C E - 3 7 *

1 g. An act or condition that depicts torture, physical restraint by being
 2 fettered or bound, or flagellation of or by a nude person or a person
 3 clad in undergarments or in revealing or bizarre costume.

4 (b) Sexual Extortion. – A person commits the offense of sexual extortion if the person
 5 intentionally threatens to disclose a private image, or to decline to delete, remove, or retract a
 6 previously disclosed private image, of the victim or of an immediate family member of the victim
 7 in order to compel or attempt to compel the victim or an immediate family member of the victim
 8 to do any act or refrain from doing any act against the victim's will, with the intent to obtain
 9 additional private images or anything else of value or any acquittance, advantage, or immunity.
 10 A violation of this subsection is punishable as follows:

11 (1) For an offense by a person who is an adult at the time of the offense, the
 12 violation is a Class F felony.

13 (2) For a first offense by a person who is a minor at the time of the offense, the
 14 violation is a Class 1 misdemeanor.

15 (3) For a second or subsequent offense by a person who is a minor at the time of
 16 the offense, the violation is a Class F felony.

17 (c) Aggravated Sexual Extortion. – A person commits the offense of aggravated sexual
 18 extortion if the person intentionally threatens to disclose a private image, or to decline to delete,
 19 remove, or retract a previously disclosed private image, of the victim or of an immediate family
 20 member of the victim in order to compel or attempt to compel the victim or an immediate family
 21 member of the victim to do any act or refrain from doing any act against the victim's will, with
 22 the intent to obtain additional private images or anything else of value or any acquittance,
 23 advantage, or immunity, and the victim is a minor or an individual with a disability and the person
 24 is an adult at the time of the offense. A violation of this subsection shall be punishable as a Class
 25 E felony.

27 **UPDATE OFFENSES RELATED TO SEXUAL EXPLOITATION OF A MINOR**

28 **SECTION 2.(a)** G.S. 14-190.13 reads as rewritten:

29 **"§ 14-190.13. Definitions for certain offenses concerning minors.**

30 The following definitions apply to G.S. 14-190.14, displaying material harmful to minors;
 31 G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances;
 32 G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual
 33 exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a ~~minor~~ minor; and
 34 G.S. 14-190.17B, obscene visual representation of sexual exploitation of a minor.

35 (1) Harmful to Minors. – That quality of any material or performance that depicts
 36 sexually explicit nudity or sexual activity and that, taken as a whole, has the
 37 following characteristics:

38 a. The average adult person applying contemporary community
 39 standards would find that the material or performance has a
 40 predominant tendency to appeal to a prurient interest of minors in sex;
 41 and

42 b. The average adult person applying contemporary community
 43 standards would find that the depiction of sexually explicit nudity or
 44 sexual activity in the material or performance is patently offensive to
 45 prevailing standards in the adult community concerning what is
 46 suitable for minors; and

47 c. The material or performance lacks serious literary, artistic, political,
 48 or scientific value for minors.

49 (1a) Identifiable minor. – An individual who meets all of the following criteria:

50 a. Was a minor at the time either of the following occurred:

51 1. The material was created, adapted, or modified.

- 1 (7) Child Sex Doll. – Means an anatomically correct doll, mannequin, or robot
 2 that meets both of the following requirements:
 3 a. Has the features of or features that resemble those of a minor.
 4 b. Is intended to be used for sexual stimulation or gratification."

5 **SECTION 2.(b)** G.S. 14-190.16 reads as rewritten:

6 "**§ 14-190.16. First degree sexual exploitation of a minor.**

7 (a) Offense. – A person commits the offense of first degree sexual exploitation of a minor
 8 if, knowing the character or content of the material or ~~performance, he:performance,~~ the person
 9 does any of the following:

- 10 (1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage
 11 in or assist others to engage in sexual activity for a live performance or for the
 12 purpose of producing material that contains a visual representation depicting
 13 this ~~activity; or~~activity.
 14 (2) Permits a minor under his custody or control to engage in sexual activity for
 15 a live performance or for the purpose of producing material that contains a
 16 visual representation depicting this ~~activity; or~~activity.
 17 (3) Transports or finances the transportation of a minor through or across this
 18 State with the intent that the minor engage in sexual activity for a live
 19 performance or for the purpose of producing material that contains a visual
 20 representation depicting this ~~activity; or~~activity.
 21 (4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain
 22 material that contains a visual representation depicting a minor engaged in
 23 sexual activity.
 24 (5) Creates for sale or pecuniary gain material created, adapted, or modified to
 25 appear that an identifiable minor is engaged in sexual activity.
 26 (6) Creates for sale or pecuniary gain a child sex doll of an identifiable minor.

27 (b) Inference. – In a prosecution under this section, the trier of fact may infer that a
 28 participant in sexual activity whom material through its title, text, visual representations, or
 29 otherwise represents or depicts as a minor is a minor.

30 (c) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.

31 (d) Punishment and Sentencing. – ~~Violation of this section is a Class C felony.~~ Violation
 32 of subdivision (a)(5) of this section is a Class D felony. Any other violation of this section is a
 33 Class C felony."

34 **SECTION 2.(c)** G.S. 14-190.17 reads as rewritten:

35 "**§ 14-190.17. Second degree sexual exploitation of a minor.**

36 (a) Offense. – A person commits the offense of second degree sexual exploitation of a
 37 minor if, knowing the character or content of the ~~material, he:~~ material, the person does either of
 38 the following:

- 39 (1) Records, photographs, films, develops, or duplicates material that contains a
 40 visual representation of a minor engaged in sexual ~~activity; or~~activity.
 41 (2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or
 42 solicits material that contains a visual representation of a minor engaged in
 43 sexual ~~activity-~~activity or that has been created, adapted, or modified to appear
 44 that an identifiable minor is engaged in sexual activity.
 45 (3) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or
 46 solicits a child sex doll.

47 (b) Inference. – In a prosecution under this section, the trier of fact may infer that a
 48 participant in sexual activity whom material through its title, text, visual representations or
 49 otherwise represents or depicts as a minor is a minor.

50 (c) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.

51 (d) Punishment and Sentencing. – Violation of this section is a Class E felony."

1 **SECTION 2.(d)** G.S. 14-190.17A reads as rewritten:

2 "**§ 14-190.17A. Third degree sexual exploitation of a minor.**

3 (a) Offense. – A person commits the offense of third degree sexual exploitation of a
4 minor if, knowing the character or content of the material, he possesses a child sex doll or material
5 that contains a visual representation of a minor engaging in sexual ~~activity~~ activity or that has
6 been created, adapted, or modified to appear that an identifiable minor is engaging in sexual
7 activity.

8 (b) Inference. – In a prosecution under this section, the trier of fact may infer that a
9 participant in sexual activity whom material through its title, text, visual representations or
10 otherwise represents or depicts as a minor is a minor.

11 (c) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.

12 (d) Punishment and Sentencing. – Violation of this section is a Class H felony."

13 **SECTION 2.(e)** Article 26 of Chapter 14 of the General Statutes is amended by
14 adding a new section to read:

15 "**§ 14-190.17B. Obscene visual representation of sexual exploitation of a minor.**

16 (a) It is a Class E felony for any person to knowingly produce, distribute, receive, or
17 possess with intent to distribute material that meets both of the following criteria:

18 (1) Depicts a person with the features of or features that resemble those of a minor
19 engaging in sexual activity.

20 (2) Is obscene.

21 (b) It is a Class H felony for any person to knowingly possess material that meets both of
22 the following criteria:

23 (1) Depicts a person with the features of or features that resemble those of a minor
24 engaging in sexual activity.

25 (2) Is obscene.

26 (c) Nothing in this section shall require that the visual depiction be of an actual minor."

27 **SECTION 2.(f)** G.S. 14-202.3 reads as rewritten:

28 "**§ 14-202.3. Solicitation of child by computer or certain other electronic devices to commit**
29 **an unlawful sex act.**

30 (a) Offense. – A person is guilty of solicitation of a child by a computer if the person is
31 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act,
32 entices, advises, coerces, orders, or commands, by means of a computer or any other device
33 capable of electronic data storage or ~~transmission~~ transmission, any of the following:

34 (1) ~~a~~ A child who is less than 16 years of age and at least five years younger than
35 the defendant, defendant to meet with the defendant or any other person for the
36 purpose of committing an unlawful sex act.

37 (2) ~~or a~~ A person the defendant believes to be a child who is less than 16 years of
38 age and who the defendant believes to be at least five years younger than the
39 defendant, to meet with the defendant or any other person for the purpose of
40 committing an unlawful sex act. ~~Consent is not a defense to a charge under~~
41 this section.

42 (3) A person the defendant believes to be the parent, guardian, or caretaker of a
43 child who is less than 16 years of age and who the defendant believes to be at
44 least five years younger than the defendant, to meet with the defendant or any
45 other person for the purpose of committing an unlawful sex act.

46 (b) Jurisdiction. – The offense is committed in the State for purposes of determining
47 jurisdiction, if the transmission that constitutes the offense either originates in the State or is
48 received in the State.

49 (c) Punishment. – A violation of this section is punishable as follows:

50 (1) A violation is a Class H felony except as provided by subdivision (2) of this
51 subsection.

- 1 (2) If either the defendant, or any other person for whom the defendant was
 2 arranging the meeting in violation of this section, actually appears at the
 3 meeting location, then the violation is a Class G felony.
 4 (d) Consent not a defense. – Consent is not a defense to a charge under this section."
 5

6 **UPDATE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION**
 7 **PROGRAMS**

8 **SECTION 3.(a)** G.S. 14-208.6(5) reads as rewritten:

9 "(5) Sexually violent offense. – A violation of former G.S. 14-27.6 (attempted rape
 10 or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22
 11 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a child by an
 12 adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory
 13 rape of a person who is 15 years of age or younger and where the defendant is
 14 at least six years older), G.S. 14-27.26 (first-degree forcible sexual offense),
 15 G.S. 14-27.27 (second-degree forcible sexual offense), G.S. 14-27.28
 16 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree
 17 statutory sexual offense), G.S. 14-27.30(a) (statutory sexual offense with a
 18 person who is 15 years of age or younger and where the defendant is at least
 19 six years older), G.S. 14-27.31 (sexual activity by a substitute parent or
 20 custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33
 21 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is
 22 committed against a minor who is less than 18 years of age or (ii) the offense
 23 is committed against any person with the intent that they be held in sexual
 24 servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual
 25 servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6
 26 (employing or permitting minor to assist in offenses against public morality
 27 and decency), G.S. 14-190.9(a1) (felonious indecent exposure),
 28 G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17
 29 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree
 30 sexual exploitation of a minor), G.S. 14-190.17B (obscene visual
 31 representation of sexual exploitation of a minor), G.S. 14-202.1 (taking
 32 indecent liberties with children), G.S. 14-202.3 (Solicitation of child by
 33 computer or certain other electronic devices to commit an unlawful sex act),
 34 G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c)
 35 or (d) (patronizing a prostitute who is a minor or has a mental disability),
 36 G.S. 14-205.3(b) (promoting prostitution of a minor or a person who has a
 37 mental disability), G.S. 14-318.4(a1) (parent or caretaker commit or permit
 38 act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or
 39 allowing of sexual act upon a juvenile by parent or guardian). The term also
 40 includes the following: a solicitation or conspiracy to commit any of these
 41 offenses; aiding and abetting any of these offenses."

42 **SECTION 3.(b)** G.S. 14-208.15A(e) reads as rewritten:

- 43 "(e) An entity that receives:
 44 (1) A complaint from a user of the entity's services that a person uses its service
 45 to solicit a minor by computer to commit an unlawful sex act as defined in
 46 G.S. 14-202.3, or
 47 (2) A report that a user may be violating G.S. 14-190.17 ~~or G.S. 14-190.17A,~~
 48 G.S. 14-190.17A, or G.S. 14-190B by posting or transmitting material that
 49 contains a visual representation of a minor engaged in sexual activity,
 50 shall report that information and the online identifier information of the person allegedly
 51 committing the offense, including whether that online identifier is included in the statewide

1 registry, to the Cyber Tip Line at the National Center for Missing and Exploited Children, which
2 shall forward that report to an appropriate law enforcement official in this State. The offense is
3 committed in the State for purposes of determining jurisdiction, if the transmission that
4 constitutes the offense either originates in the State or is received in the State."

5 **SECTION 3.(c)** G.S. 14-208.18 reads as rewritten:

6 **"§ 14-208.18. Sex offender unlawfully on premises.**

7 (a) It shall be unlawful for any person required to register under this Article, if the offense
8 requiring registration is described in subsection (c) of this section, to knowingly be at any of the
9 following locations:

- 10 (1) On the premises of any place intended primarily for the use, care, or
11 supervision of minors, including, but not limited to, schools, children's
12 museums, child care centers, nurseries, and playgrounds.
- 13 (2) Within 300 feet of any location intended primarily for the use, care, or
14 supervision of minors when the place is located on premises that are not
15 intended primarily for the use, care, or supervision of minors, including, but
16 not limited to, places described in subdivision (1) of this subsection that are
17 located in malls, shopping centers, or other property open to the general
18 public.
- 19 (3) At any place where minors frequently congregate, including, but not limited
20 to, libraries, arcades, amusement parks, recreation parks, and swimming
21 pools, when minors are present.
- 22 (4) On the State Fairgrounds during the period of time each year that the State
23 Fair is conducted, on the Western North Carolina Agricultural Center grounds
24 during the period of time each year that the North Carolina Mountain State
25 Fair is conducted, and on any other fairgrounds during the period of time that
26 an agricultural fair is being conducted.

27 (b) Notwithstanding any provision of this section, a person subject to subsection (a) of
28 this section who is the parent or guardian of a minor may take the minor to any location that can
29 provide emergency medical care treatment if the minor is in need of emergency medical care.

30 (c) The subdivisions of subsection (a) of this section are applicable as follows:

- 31 (1) Subdivisions (1), (3), and (4) of subsection (a) of this section apply to persons
32 required to register under this Article who have committed any of the
33 following offenses:
 - 34 a. Any offense in Article 7B of this Chapter or any federal offense or
35 offense committed in another state, which if committed in this State,
36 is substantially similar to an offense in Article 7B of this Chapter.
 - 37 b. Any offense where the victim of the offense was under the age of 18
38 years at the time of the offense.
 - 39 c. Any offense in violation of G.S. 14-190.16, 14-190.17, ~~or 14-190.17A~~
40 14-190.17A, or 14-190.17B or any federal offense or offense
41 committed in another state, which if committed in this State is
42 substantially similar to an offense in violation of G.S. 14-190.16,
43 14-190.17, ~~or 14-190.17A, 14-190.17A, or 14-190.17B.~~
- 44 (2) Subdivision (2) of subsection (a) of this section applies to persons required to
45 register under this Article if any of the following apply:
 - 46 a. The person has committed any offense in Article 7B of this Chapter or
47 any federal offense or offense committed in another state, which if
48 committed in this State is substantially similar to an offense in Article
49 7B of this Chapter, and a finding has been made in any criminal or
50 civil proceeding that the person presents, or may present, a danger to
51 minors under the age of 18.

- 1 b. The person has committed any offense where the victim of the offense
2 was under the age of 18 years at the time of the offense.
- 3 c. The person has committed an offense in violation of G.S. 14-190.16,
4 14-190.17, ~~or 14-190.17A~~14-190.17A, or 14-190.17B or any federal
5 offense or offense committed in another state, which if committed in
6 this State is substantially similar to an offense in violation of
7 G.S. 14-190.16, 14-190.17, ~~or 14-190.17A~~14-190.17A, or
8 14-190.17B.
- 9 (d) A person subject to subsection (a) of this section who is a parent or guardian of a
10 student enrolled in a school may be present on school property if all of the following conditions
11 are met:
- 12 (1) The parent or guardian is on school property for the purpose for one of the
13 following:
- 14 a. To attend a conference at the school with school personnel to discuss
15 the academic or social progress of the parents' or guardians' child; or
16 b. The presence of the parent or guardian has been requested by the
17 principal or his or her designee for any other reason relating to the
18 welfare or transportation of the child.
- 19 (2) The parent or guardian complies with all of the following:
- 20 a. Notice: The parent or guardian shall notify the principal of the school
21 of the parents' or guardians' registration under this Article and of his
22 or her presence at the school unless the parent or guardian has
23 permission to be present from the superintendent or the local board of
24 education, or the principal has granted ongoing permission for regular
25 visits of a routine nature. If permission is granted by the superintendent
26 or the local board of education, the superintendent or chairman of the
27 local board of education shall inform the principal of the school where
28 the parents' or guardians' will be present. Notification includes the
29 nature of the parents' or guardians' visit and the hours when the parent
30 or guardian will be present at the school. The parent or guardian is
31 responsible for notifying the principal's office upon arrival and upon
32 departure. Any permission granted under this sub-subdivision shall be
33 in writing.
- 34 b. Supervision: At all times that a parent or guardian is on school
35 property, the parent or guardian shall remain under the direct
36 supervision of school personnel. A parent or guardian shall not be on
37 school property even if the parent or guardian has ongoing permission
38 for regular visits of a routine nature if no school personnel are
39 reasonably available to supervise the parent or guardian on that
40 occasion.
- 41 (e) A person subject to subsection (a) of this section who is eligible to vote may be present
42 at a location described in subsection (a) used as a voting place as defined by G.S. 163-165 only
43 for the purposes of voting and shall not be outside the voting enclosure other than for the purpose
44 of entering and exiting the voting place. If the voting place is a school, then the person subject to
45 subsection (a) shall notify the principal of the school that he or she is registered under this Article.
- 46 (f) A person subject to subsection (a) of this section who is eligible under G.S. 115C-378
47 to attend public school may be present on school property if permitted by the governing body of
48 the public school unit pursuant to G.S. 115C-390.11(a)(2).
- 49 (g) A juvenile subject to subsection (a) of this section may be present at a location
50 described in that subsection if the juvenile is at the location to receive medical treatment or mental

1 health services and remains under the direct supervision of an employee of the treating institution
2 at all times.

3 (g1) Notwithstanding any provision of this section, a person subject to subsection (a) of
4 this section who is required to wear an electronic monitoring device shall wear an electronic
5 monitoring device that provides exclusion zones around the premises of all elementary and
6 secondary schools in North Carolina.

7 (h) A violation of this section is a Class H felony."

8 **SECTION 3.(d)** G.S. 14-208.40A(d) reads as rewritten:

9 "(d) The court shall order that the Department of Adult Correction do a risk assessment of
10 the offender if the court finds each of the following:

11 (1) The offender committed an offense that involved the physical, mental, or
12 sexual abuse of a minor.

13 (2) The offense under subdivision (1) of this subsection is not an aggravated
14 offense or a violation of G.S. 14-27.23 or G.S. 14-27.28.

15 (3) The offender is not a reoffender, or is a reoffender of a crime under
16 G.S. 14-27.31, 14-27.32, 14-27.33, 14-178(b)(3), 14-190.6, 14-190.9(a1),
17 14-190.17, 14-190.17A, 14-190.17B, 14-202.1, 14-202.3, 14-202.4(a), or
18 14-205.2(c).

19 The Department shall have up to 60 days to complete the risk assessment of the offender and
20 report the results to the court. The Department may use a risk assessment of the offender done
21 within six months of the date of the hearing."
22

23 **CLARIFY OFFENSE OF DISCLOSURE OF PRIVATE IMAGES**

24 **SECTION 4.** G.S. 14-190.5A reads as rewritten:

25 **"§ 14-190.5A. Disclosure of private images; civil action.**

26 (a) Definitions. – The following definitions apply in this section:

27 (1) Disclose. – Transfer, publish, distribute, or reproduce.

28 (2) Image. – A photograph, film, videotape, recording, live transmission, digital
29 or computer-generated visual depiction, including a realistic visual depiction
30 created, adapted or modified by technological means, including algorithms or
31 artificial intelligence, such that a reasonable person would believe the image
32 depicts an identifiable individual, or any other reproduction that is created,
33 adapted, or modified or any other reproduction that is ~~made~~ created, adapted,
34 or modified by electronic, mechanical, or other means.

35 (3) Intimate parts. – Any of the following naked human parts: (i) male or female
36 genitals, (ii) male or female pubic area, (iii) male or female anus, or (iv) the
37 nipple of a female over the age of 12.

38 (4), (5) Repealed by Session Laws 2017-93, s. 1, effective December 1, 2017, and
39 applicable to offenses committed on or after that date.

40 (6) Sexual conduct. – Includes any of the following:

41 a. Vaginal, anal, or oral intercourse, whether actual or simulated, normal
42 or perverted.

43 b. Masturbation, excretory functions, or lewd exhibition of uncovered
44 genitals.

45 c. An act or condition that depicts torture, physical restraint by being
46 fettered or bound, or flagellation of or by a nude person or a person
47 clad in undergarments or in revealing or bizarre costume.

48 (b) Offense. – A person is guilty of disclosure of private images if all of the following
49 apply:

50 (1) The person knowingly discloses an image of another person with the intent to
51 do either of the following:

- 1 a. Coerce, harass, intimidate, demean, humiliate, or cause financial loss
2 to the depicted person.
- 3 b. Cause others to coerce, harass, intimidate, demean, humiliate, or cause
4 financial loss to the depicted person.
- 5 (2) The depicted person is identifiable from the disclosed image itself or
6 information offered in connection with the image.
- 7 (3) The depicted person's intimate parts are or are realistically depicted to be
8 exposed or the depicted person is or is realistically depicted to be engaged in
9 sexual conduct in the disclosed image.
- 10 (4) The person discloses the image without the affirmative consent of the depicted
11 person.
- 12 (5) The person ~~obtained~~ obtained, created, adapted, or modified the image without
13 consent of the depicted person or under circumstances such that the person
14 knew or should have known that the depicted person expected the images to
15 remain private.
- 16 (c) Penalty. – A violation of this section shall be punishable as follows:
- 17 (1) For an offense by a person who is 18 years of age or older at the time of the
18 offense, the violation is a Class H felony.
- 19 (2) For a first offense by a person who is under 18 years of age at the time of the
20 offense, the violation is a Class 1 misdemeanor.
- 21 (3) For a second or subsequent offense by a person who is under the age of 18 at
22 the time of the offense, the violation is a Class H felony.
- 23 (d) Exceptions. – This section does not apply to any of the following:
- 24 (1) Images involving voluntary exposure in public or commercial settings.
- 25 (2) Disclosures made in the public interest, including, but not limited to, the
26 reporting of unlawful conduct or the lawful and common practices of law
27 enforcement, criminal reporting, legal proceedings, medical treatment, or
28 scientific or educational activities.
- 29 (3) Providers of an interactive computer service, as defined in 47 U.S.C. § 230(f),
30 for images provided by another person.
- 31 (e) Destruction of Image. – In addition to any penalty or other damages, the court may
32 award the destruction of any image made in violation of this section.
- 33 (f) Other Sanctions or Remedies Not Precluded. – A violation of this section is an offense
34 additional to other civil and criminal provisions and is not intended to repeal or preclude any
35 other sanctions or remedies.
- 36 (g) Civil Action. – In addition to any other remedies at law or in equity, including an
37 order by the court to destroy any image disclosed in violation of this section, any person whose
38 image is disclosed, or used, as described in subsection (b) of this section, has a civil cause of
39 action against any person who discloses or uses the image and is entitled to recover from the
40 other person any of the following:
- 41 (1) Actual damages, but not less than liquidated damages, to be computed at the
42 rate of one thousand dollars (\$1,000) per day for each day of the violation or
43 in the amount of ten thousand dollars (\$10,000), whichever is higher.
- 44 (2) Punitive damages.
- 45 (3) A reasonable attorneys' fee and other litigation costs reasonably incurred.
- 46 The civil cause of action may be brought no more than one year after the initial discovery of the
47 disclosure, but in no event may the action be commenced more than seven years from the most
48 recent disclosure of the private image."

EFFECTIVE DATE.

1 **SECTION 5.** This act becomes effective December 1, 2024, and applies to offenses
2 committed on or after that date.