

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 399
RATIFIED BILL

AN ACT TO PROTECT PERSONS WHO ARE PHOTOGRAPHED, VIDEOTAPED, OR RECORDED WITHOUT THEIR CONSENT FROM HAVING HIS OR HER IMAGE DISCLOSED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.5A reads as rewritten:

"§ 14-190.5A. Disclosure of private images.

- (a) Definitions. – The following definitions apply in this section:
- (1) Disclose. – Transfer, publish, distribute, or reproduce.
 - (2) Image. – A photograph, film, videotape, recording, ~~digital, or other reproduction.~~ live transmission, digital or computer-generated visual depiction, or any other reproduction that is made by electronic, mechanical, or other means.
 - (3) Intimate parts. – Any of the following naked human parts: (i) male or female genitals, (ii) male or female pubic area, (iii) male or female anus, or (iv) the nipple of a female over the age of 12.
 - (4) ~~Personal relationship.— As defined in G.S. 50B-1(b).~~
 - (5) ~~Reasonable expectation of privacy.— When a depicted person has consented to the disclosure of an image within the context of a personal relationship and the depicted person reasonably believes that the disclosure will not go beyond that relationship.~~
 - (6) Sexual conduct. – Includes any of the following:
 - a. Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted.
 - b. Masturbation, excretory functions, or lewd exhibition of uncovered genitals.
 - c. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.
- (b) Offense. – A person is guilty of disclosure of private images if all of the following apply:
- (1) The person knowingly discloses an image of another person with the intent to do either of the following:
 - a. Coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
 - b. Cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
 - (2) The depicted person is identifiable from the disclosed image itself or information offered in connection with the image.
 - (3) The depicted person's intimate parts are exposed or the depicted person is engaged in sexual conduct in the disclosed image.



- (4) The person discloses the image without the affirmative consent of the depicted person.
 - (5) The person ~~discloses~~obtained the image without consent of the depicted person or under circumstances such that the person knew or should have known that the depicted person had a reasonable expectation of privacy~~expected the images to remain private.~~
- (c) Penalty. – A violation of this section shall be punishable as follows:
- (1) For an offense by a person who is 18 years of age or older at the time of the offense, the violation is a Class H felony.
 - (2) For a first offense by a person who is under 18 years of age at the time of the offense, the violation is a Class 1 misdemeanor.
 - (3) For a second or subsequent offense by a person who is under the age of 18 at the time of the offense, the violation is a Class H felony.
- (d) Exceptions. – This section does not apply to any of the following:
- (1) Images involving voluntary exposure in public or commercial settings.
 - (2) Disclosures made in the public interest, including, but not limited to, the reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, medical treatment, or scientific or educational activities.
 - (3) Providers of an interactive computer service, as defined in 47 U.S.C. § 230(f), for images provided by another person.

....."

SECTION 2. The Joint Legislative Oversight Committee on Justice and Public Safety shall study the issue of improper disclosure of an image of a person superimposed onto another image of exposed intimate parts or depicting sexual conduct. The study shall include whether any existing crimes or civil actions currently apply and whether G.S. 14-190.5A, as enacted, should be amended to include superimposed images. The Joint Legislative Oversight Committee on Justice and Public Safety shall report its findings and any recommendations to the General Assembly by April 1, 2018.

SECTION 3. Except as otherwise provided, this act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____, m. this _____ day of _____, 2017