Model Legislation: Nonconsensual Distribution of Intimate Images "NDII"

NDII SENTENCING POLICY

SUMMARY
This act improves legal protections against the nonconsensual distribution of intimate images by using a progressive approach employing appropriate and graduated responses.

SUBDIVISION 1. DEFINITIONS

(1) Intimate image: any still or videographic image that depicts:

(i) wholly or partially uncovered genitals, pubic area, anus, or post-pubescent female nipple or areola of an individual;

(ii) the display or transfer of semen or vaginal secretion;

or (iii) sexually explicit conduct

(2) Digitally Forged Intimate Image - Any intimate image of an identifiable individual that appears to a reasonable person to be:

(i) indistinguishable from an authentic visual depiction of the individual, and,

(ii) that is generated or substantially modified using machine-learning techniques or any other computer-generated or machine-generated means to falsely depict an individual's appearance or conduct, regardless of whether the visual depiction indicates, through a label or some other form of information published with the visual depiction, that the visual depiction is not authentic.

SUBDIVISION 2. CRIME

(1) It is a crime to intentionally disseminate an intimate image of another person when:

(A) the reckless disclosure of the visual material reveals the identity of the depicted person, including through:

(i) any accompanying or subsequent information or material related to the visual material; or

(ii) information or material provided by a third party in response to the disclosure of the visual material.

(B) the person disseminating such image fails to obtain affirmative consent from the person(s) depicted to disseminate the image; and

(C) the image was obtained or created under circumstances in which the person disseminating the image knew or reasonably should have known the person(s) depicted had a reasonable expectation of privacy.

(2) Any dissemination of multiple intimate images of the same individual as part of a common act is a single offense.

(3) The provisions of this subdivision shall not apply to any intimate image created by law-enforcement pursuant to a criminal investigation which is otherwise lawful.

(4) The fact that the identifiable individual provided consent for the creation of the intimate image shall not establish that the individual provided consent for the dissemination of the intimate image; and

(A) the fact that the identifiable individual disclosed the intimate image to another individual shall not establish that the identifiable individual provided consent for the dissemination of the intimate image by the person alleged to have violated this subdivision.

(B) Absent affirmative consent to disseminate, intimate content creators shall have a reasonable expectation that individuals who view their content shall not record or disseminate it.

(5) It is a crime to intentionally disseminate any digitally forged intimate image of another person when:

(A) the disclosure of the visual material reveals the identity of the depicted person, including through:

(i) any accompanying or subsequent information or material related to the image; or

(ii) information or material provided by a third party in response to the disclosure of the image.

(B) the person disseminating the image fails to obtain affirmative consent from the person(s) depicted to disseminate the image.

(C) Any dissemination of multiple digitally forged intimate images of the same individual as part of a common act is a single offense.

(6) A violation of this subdivision is committed within the state if any conduct that is an element of the offense occurs within the state.

(A) Prosecution for a violation of this subdivision may be had in any jurisdiction in which the offense was committed or a victim resides.

(7) Prosecution for violation of this subdivision shall be commenced:

(i) for a misdemeanor within five years of the commission of the offense or within three years of the date the victim discovers the offense or, by the exercise of due diligence, reasonably should have discovered the offense, whichever is later, or

(ii) for a felony within seven years of the commission of the offense or within three years of the date the victim discovers the offense or, by the exercise of due diligence, reasonably should have discovered the offense, whichever is later.

SUBDIVISION 3. PENALTIES

(1) Whoever violates subdivision 2 without intent to cause physical, mental, economic, or reputational harm to the individual(s) portrayed in the intimate image is guilty of a misdemeanor and shall be sentenced to not more than 12 months in jail or payment of a fine of up to $2,500 or both.

(A) Any second or subsequent conviction under Subdivision 3, paragraph (1), after an intervening adjudication for a previous violation of any part of this act is a felony
And shall be sentenced to not more than five years in prison, a fine of up to $5,000, or both.

(2) Whoever violates Subdivision 2 with the intent to cause physical, mental, economic, or reputational harm to the individual(s) portrayed in the image, or for the purpose of profit or

pecuniary gain, is guilty of a felony and shall be sentenced to not more than 5 years in prison, a fine of up to $5,000, or both:

(A) Any second or subsequent conviction under Subdivision 3, paragraph (2), after an intervening adjudication for a previous violation of Subdivision 3 paragraphs (2) or (3), is a felony and shall be sentenced to not more than 10 years in prison, a fine of up to $10,000, or both.

(3) Whoever violates Subdivision 2 with the intent to cause physical, mental, economic, or reputational harm to the individual(s) portrayed in the image, or for the purpose of profit or pecuniary gain, because of that individual(s) race, religion, gender, disability, sexual orientation, or ethnic or national origin is guilty of a felony hate crime and shall be sentenced to not more than 10 years in prison, a fine of up to $10,000, or both.

NOTES: