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HOUSE BILL NO. 2288

Offered January 13, 2025

Prefiled January 8, 2025

A BILL to amend and reenact §§ 18.2-386.2 and 19.2-8 of the Code of Virginia, relating to unlawful dissemination of intimate images of another; penalties.

Patrons—Coyner, Delaney, Campbell, Cherry, Convirs-Fowler, Green, Henson, Lovejoy, Owen, Taylor, Walker, Willett and Williams

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-386.2 and 19.2-8 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-386.2. Unlawful dissemination of intimate images of another; penalties.

A. Any person who, with the intent to coerce, harass, or intimidate, maliciously disseminates or sells any videographic or still image created by any means whatsoever that depicts another person (i) who is totally nude; (ii) who is in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast; or (iii) whose genitals, pubic area, buttocks, or female breast are not exposed but such videographic or still image is obscene as defined in § 18.2-372 where such person knows or has reason to know that he is not licensed or authorized to disseminate or sell such videographic or still image is guilty of a Class 1 misdemeanor. For purposes of this subsection, "another" as used in this section:

"Another person" includes a person whose image was used in creating, adapting, or modifying a videographic or still image with the intent to depict an actual person and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic.

"Intimate image" means any videographic or still image created by any means whatsoever that depicts another person (i) who is totally nude; (ii) who is in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast; or (iii) whose genitals, pubic area, buttocks, or female breast are not exposed but such videographic or still image is obscene as defined in § 18.2-372. "Intimate image" includes any videographic or still image that is indistinguishable from an authentic videographic or still image of such person, generated or substantially modified using machine learning techniques or any other computer-generated or machine-generated means to falsely depict such person's appearance or conduct, regardless of whether the videographic or still image depiction indicates, through a label or some other form of information published with the videographic or still image, that such videographic or still image is inauthentic.

B. Any person who, without intent to cause physical, mental, economic, or reputational harm to the person portrayed in the intimate image or secure pecuniary gain for himself, intentionally disseminates an intimate image where such image was obtained or created under circumstances in which he knew or reasonably should have known that the person portrayed had a reasonable expectation of privacy and he did not obtain affirmative consent of such person portrayed for the dissemination of such image is guilty of a Class 1 misdemeanor. A second or subsequent offense under this subsection after such person has been at liberty as defined in § 53.1-151 between each conviction is a Class 6 felony.

C. Any person who violates subsection B with the intent to cause physical, mental, economic, or reputational harm to the person portrayed in the intimate image or secure pecuniary gain for himself is guilty of a Class 6 felony. A second or subsequent offense under this subsection after such person has been at liberty as defined in § 53.1-151 between each conviction is a Class 5 felony.

D. Any person who violates subsection C and intentionally selects another person against whom the offense is committed because of such person's race, religious conviction, gender, disability, gender identity, sexual orientation, color, or ethnic or national origin is guilty of a Class 5 felony. A second or subsequent offense under this subsection after such person has been at liberty as defined in § 53.1-151 between each conviction is a Class 4 felony.

E. Any dissemination of multiple intimate images of the same person as part of a common act, transaction, or scheme shall be deemed a single offense.

F. The provisions of this section shall not apply to any intimate image created by any means whatsoever by law enforcement pursuant to a criminal investigation that is otherwise lawful.

G. The fact that the person portrayed in the intimate image provided consent for the creation of such image shall not establish that such person provided consent for the dissemination of such image. The fact that such person disseminated such image to the alleged offender or any other person shall not establish that such person portrayed provided consent for the further dissemination of such image by the alleged offender. Additionally, the fact that the person portrayed in the intimate image engages in conduct for the creation of

58 *such image and the dissemination of such image on the Internet or by any other means shall not establish that*
 59 *such person has consented to any recording or further dissemination of such image absent affirmative*
 60 *consent from such person.*

61 *H. If a person uses services of an Internet service provider, an electronic mail service provider, or any*
 62 *other information service, system, or access software provider that provides or enables computer access by*
 63 *multiple users to a computer server in committing acts prohibited under this section, such provider shall not*
 64 *be held responsible for violating this section for content provided by another person.*

65 ~~*E. I. Venue for a prosecution under this section may lie in the jurisdiction where (i) the victim resides, (ii)*~~
 66 ~~*the unlawful act occurs, or where (iii) any videographic or still intimate image created by any means*~~
 67 ~~*whatsoever is produced, reproduced, found, stored, received, or possessed in violation of this section.*~~

68 ~~*D. J. The provisions of this section shall not preclude prosecution under any other statute.*~~

69 **§ 19.2-8. Limitation of prosecutions.**

70 A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be
 71 commenced within one year next after there was cause therefor, except that a prosecution for petit larceny
 72 may be commenced within five years, and for an attempt to produce abortion, within two years after
 73 commission of the offense.

74 A prosecution for any misdemeanor violation of § 54.1-3904 shall be commenced within two years of the
 75 discovery of the offense.

76 A prosecution for violation of laws governing the placement of children for adoption without a license
 77 pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for
 78 adoption.

79 A prosecution for making a false statement or representation of a material fact knowing it to be false or
 80 knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the
 81 Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next
 82 after the commission of the offense.

83 A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14
 84 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance
 85 as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

86 Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of
 87 the offense by the building official, provided that such discovery occurs within two years of the date of initial
 88 occupancy or use after construction of the building or structure, or the issuance of a certificate of use and
 89 occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to
 90 the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code
 91 shall commence within one year of the issuance of a notice of violation for the offense by the building
 92 official.

93 Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the discovery
 94 of the offense by the complainant, but in no case later than five years from occurrence of the offense.

95 Prosecution of any misdemeanor violation of any professional licensure requirement imposed by a locality
 96 shall commence within one year of the discovery of the offense by the complainant, but in no case later than
 97 five years from occurrence of the offense.

98 Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two
 99 years next after the commission of the offense.

100 Prosecution for a violation for which a penalty is provided for by § 55.1-1989 shall commence within
 101 three years next after the commission of the offense.

102 Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553
 103 shall commence within three years after commission of the offense.

104 Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents
 105 or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment
 106 thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time
 107 or times required by law or regulations shall commence within three years next after the commission of the
 108 offense, unless a longer period is otherwise prescribed.

109 Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the
 110 commission of the offense, except violations regarding agricultural animals shall commence within one year
 111 of the commission of the offense.

112 A prosecution for a misdemeanor violation of § 18.2-386.1 ~~or 18.2-386.2~~ shall be commenced within five
 113 years of the commission of the offense or within one year of the date the victim discovers the offense or, by
 114 the exercise of due diligence, reasonably should have discovered the offense, whichever is later.

115 *A prosecution for a misdemeanor violation of § 18.2-386.2 shall be commenced within five years of the*
 116 *commission of the offense or within three years of the date the victim discovers the offense, or, by the exercise*
 117 *of due diligence, reasonably should have discovered the offense, whichever is later.*

118 A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et seq.)

119 of Title 24.2, shall commence within one year of the discovery of the offense but in no case more than three
120 years after the date of the commission of the offense.

121 A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer Crimes
122 Act (§ 18.2-152.1 et seq.) or pursuant to § 18.2-186.3 for identity theft shall be commenced before the earlier
123 of (i) five years after the commission of the last act in the course of conduct constituting a violation of the
124 article or (ii) one year after the existence of the illegal act and the identity of the offender are discovered by
125 the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

126 A prosecution of a misdemeanor under § 18.2-64.2, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, or
127 18.2-370.6 or clause (ii) of § 18.2-371 where the victim is a minor at the time of the offense shall be
128 commenced no later than one year after the victim reaches majority, unless the alleged offender of such
129 offense was an adult and more than three years older than the victim at the time of the offense, in which
130 instance such prosecution shall be commenced no later than five years after the victim reaches majority.

131 A prosecution for a violation of § 18.2-260.1 shall be commenced within three years of the commission of
132 the offense.

133 Nothing in this section shall be construed to apply to any person fleeing from justice or concealing
134 himself within or without the Commonwealth to avoid arrest or be construed to limit the time within which
135 any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or failure to
136 provide for the support and maintenance of a spouse or child.

137 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
138 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
139 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**
140 **therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal**
141 **Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the**
142 **Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for**
143 **periods of commitment to the custody of the Department of Juvenile Justice.**