

HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 2741
Version: Second engrossment

DATE: March 31, 2016

Authors: Lesch

Subject: Dissemination of private sexual images; civil action and criminal penalties

Analyst: Rebecca Pirius (criminal)
Mary Mullen (civil)

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/.

Overview

This bill creates civil and criminal remedies to combat a practice commonly referred to as “revenge porn,” by making it unlawful to:

- (1) disseminate private sexual images of another without consent; or
- (2) solicit sex on behalf of another person without consent.

In addition, this bill amends the crimes of coercion and criminal defamation, and tolls the civil and criminal statutes of limitations until the victim becomes aware of, or reports, the dissemination of the image.

Section

- 1** **Definitions.** Provides definitions for a new section of law creating a civil cause of action for distributing photos or videos of a person who is naked or engaged in a sex act to another person or who has solicited sex on behalf of another person. Including definitions for:
 - “Dissemination” means distributing a photo or video to another person, but does not include sending it to the person in the photo or video, or publishing the photo or video through any publically available medium
 - “Image” means a photo, film, recording, or video
- 2** **Cause of action for nonconsensual dissemination of private sexual images; sexual solicitation.** Creates two civil causes of action and provides provisions for damages,

Section

temporary relief, confidentiality, jurisdiction, venue, statute of limitations, and exceptions to liability.

Subd. 1. Nonconsensual dissemination of private sexual images. Creates a cause of action when a person distributes a photo to another person of an individual depicted in a sex act or who is naked or partially naked, without the consent of the person in the picture to distribute it. It is not a defense to the cause of action if the person agreed to take the photo or the video. The person in the image, or another person, needs to be identifiable by the image or because of identifying information posted or sent with the image. The person who distributed the image must have known, or should have known, that the image was intended to remain private.

Subd. 2. Nonconsensual sexual solicitation. Creates a cause of action against a person who distributes a sexual invitation on behalf of another person without their permission when they know it will cause the person to feel harassed, frightened, threatened, oppressed, persecuted, or intimidated.

Subd. 3. Damages. Allows the court to award damages for specific damages and financial losses due to the distribution of the image and damages for pain and suffering and mental anguish. Also allows a damage award equal to the amount of profits made off of the distribution of an image, as well as an award for court costs, fees, and reasonable attorney's fees. Finally, allows the court to award a civil penalty to the plaintiff for an amount up to \$10,000.

Subd. 4. Injunction; temporary relief. Allows a court to issue a restraining order or injunction to prevent further harm to the plaintiff and impose a civil fine up to \$1,000 per day for failure to comply with an injunction or restraining order.

Subd. 5. Confidentiality. Requires the court to allow confidential filings to protect the privacy of a plaintiff under this section. Civil actions are generally public record but a plaintiff may request that his or her identity and private information is not accessible to the public.

Subd. 6. Liability; exceptions. Limits the liability of people who are disseminating pictures or videos of people who are naked or engaged in a sexual act when the picture or video is:

- transmitted to report a crime or is part of a criminal investigation or prosecution;
- transmitted as part of medical or mental health treatment and are kept confidential;
- an exposure (nudity or sexual act) in public;
- made in a commercial setting or the purposes of the legal sale of goods or services, including artistic productions;
- related to a matter of public interest and disseminated for a lawful public purpose;
- distributed for scientific research and educational purposes; or

Section

- being used in a legal proceeding or is protected by court order.

This section does not change the protections granted in the Communications Decency Act, which prevents civil liability being imposed on an Internet service provider.

Subd. 7. Jurisdiction. Provides jurisdiction to the court if either the plaintiff or defendant live in the state of Minnesota.

Subd. 8. Venue. Provides an action can be filed in the county of residence of either the respondent or plaintiff, or where the pictures or videos were taken, reproduced, or stored.

Subd. 9. Statute of limitations. Allows the statute of limitations to begin to run (for a cause of action under subdivision 1 related to the dissemination of pictures or videos) when the plaintiff learns that the picture or video has been disseminated.

Effective date: Aug. 1, 2016, and applies to actions commenced on or after that date.

- 3** **Qualified domestic violence-related offense (QDVRO).** Adds section 617.261 (nonconsensual dissemination of private sexual images—section 9) to the definition of QDVRO. A QDVRO may be used to enhance penalties for the following crimes: violation of an order for protection, harassment restraining order, or no contact order; fifth-degree assault; domestic assault; and stalking.

Effective date: Aug. 1, 2016, and applies to crimes committed on or after that date.

- 4** **Coercion.** Adds section 617.261 (nonconsensual dissemination of private sexual images—section 9) to the coercion statute. Under this statute, it is a crime to make certain threats to another and cause another, against his or her will, to do any act or forbear doing an act.

Effective date: Aug. 1, 2016, and applies to crimes committed on or after that date.

- 5** **Attempt to coerce.** Conforming cross-reference to section 4.

Effective date: Aug. 1, 2016, and applies to crimes committed on or after that date.

- 6** **Definition; harassment restraining order.** Adds the following to the definition of harassment for purposes of seeking a civil restraining order: nonconsensual dissemination of private sexual images (created in section 9) and nonconsensual sexual solicitation (created in section 7).

Effective date: Aug. 1, 2016.

- 7** **Stalking crimes.** Adds “nonconsensual sexual solicitation” to the list of stalking offenses.

Effective date: Aug. 1, 2016, and applies to crimes committed on or after that date.

- 8** **Criminal defamation.** Amends the criminal act of defamation to address a Minnesota Court of Appeals’ ruling in *State v. Turner* (2015), which found the statute unconstitutionally overbroad because it criminalized true statements and statements made without malice. The statute is amended to punish only false statements, and strikes a current defense that allows a defendant to argue the act was justified because the defamatory matter was true and was communicated based on good motives and for justifiable ends.

Effective date: the day following final enactment.

Section

9

Nonconsensual dissemination of private sexual images.

Subd. 1. Crime. Makes it a crime to intentionally disseminate an image of another person depicted in a sexual act or whose intimate parts are exposed when: (1) the person is identifiable; (2) the actor knows or reasonably should know the person did not consent to dissemination; and (3) the image was obtained or created under circumstances a reasonable person would know the image was private.

Subd. 2. Penalties. Creates tiered penalties based on additional factors. Such factors include: victim suffers financial loss, actor disseminates image for profit or with intent to harass, actor posts image online, actor obtained image through theft, or actor has previous conviction under chapter 617.

- Gross misdemeanor: no other aggravating factors
- three-year felony: one aggravating factor present
- seven-year felony: two or more aggravating factors present

Subd. 3. No defense. It is not a defense that the person consented to the capture or possession of the image.

Subd. 4. Venue. Expands venue to county of residence of the actor or victim, or county of victim's safe-at-home designated address, or if those are not available, a county where the image is produced, reproduced, found, stored, received, or possessed.

Subd. 5. Exemptions. Exempts the following acts from being a crime:

- dissemination to report a crime or as part of a criminal investigation or prosecution;
- dissemination as part of medical or mental health treatment and are kept confidential;
- an exposure (nudity or sexual act) in public;
- image made in a commercial setting for the purposes of the legal sale of goods or services, including artistic productions;
- image related to a matter of public interest and disseminated for a lawful public purpose;
- dissemination for scientific research and educational purposes; or
- image being used in a legal proceeding or is protected by court order.

Subd. 6. Immunity. Provides immunity from criminal liability for interactive computer services, providers of public mobile services or private radio services, and telecommunications network or broadband providers.

Subd. 7. Definitions. Defines the following terms for purposes of this section: dissemination, harass, image, intimate parts, personal information, sexual act, and social media.

Section

Subd. 8. Other crimes. Provides that this section shall not limit the state from prosecuting a person for conduct that constitutes any other crime. (For example, the prosecutor could seek charges under pornographic work involving minors if applicable.)

Effective date: Aug. 1, 2016, and applies to crimes committed on or after that date.

10 Criminal statute of limitations. Maintains a three-year limitations period but starts the three years from the date the offense is reported to law enforcement (instead of the date the image is disseminated).

Effective date: Aug. 1, 2016, and applies to crimes committed on or after that date.