

No. 2014-115

AN ACT

HB 2107

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in definition of sexual offenses, providing for unlawful dissemination of intimate image; and, in particular rights and immunities, providing for damages in actions for unlawful dissemination of intimate image.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 3131. Unlawful dissemination of intimate image.

(a) Offense defined.—Except as provided in sections 5903 (relating to obscene and other sexual materials and performances), 6312 (relating to sexual abuse of children) and 6321 (relating to transmission of sexually explicit images by minor), a person commits the offense of unlawful dissemination of intimate image if, with intent to harass, annoy or alarm a current or former sexual or intimate partner, the person disseminates a visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.

(b) Defense.—It is a defense to a prosecution under this section that the actor disseminated the visual depiction with the consent of the person depicted.

(c) Grading.—An offense under subsection (a) shall be:

(1) A misdemeanor of the first degree, when the person depicted is a minor.

(2) A misdemeanor of the second degree, when the person depicted is not a minor.

(d) Territorial applicability.—A person may be convicted under the provisions of this section if the victim or the offender is located within this Commonwealth.

(e) Nonapplicability.—Nothing in this section shall be construed to apply to a law enforcement officer engaged in the performance of the law enforcement officer's official duties.

(f) Concurrent jurisdiction to prosecute.—In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of violations involving more than one county of this Commonwealth or another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if a challenge is made, the challenge shall be dismissed, and no relief shall be made

available in the courts of this Commonwealth to the person making the challenge.

(g) *Definitions.*—As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Law enforcement officer." Any officer of the United States, of the Commonwealth or political subdivision thereof, or of another state or subdivision thereof, who is empowered to conduct investigations of or to make arrests for offenses enumerated in this title or an equivalent crime in another jurisdiction, and any attorney authorized by law to prosecute or participate in the prosecution of such offense.

"Minor." An individual under 18 years of age.

"Nudity." As defined in section 5903(e).

"Sexual conduct." As defined in section 5903(e).

"Visual depiction." As defined in section 6321.

Section 2. Title 42 is amended by adding a section to read:

§ 8316.1. *Damages in actions for unlawful dissemination of intimate image.*

(a) *Cause of action established.*—A person may bring a civil cause of action based upon unlawful dissemination of intimate image, as defined in 18 Pa.C.S. § 3131 (relating to unlawful dissemination of intimate image), in order to recover damages for any loss or injury sustained as a result of the violation.

(b) *Parties authorized to bring action.*—An action may be brought by a natural person or a guardian of the natural person, if the person is incompetent.

(c) *Damages.*—A court of competent jurisdiction may award damages as set forth in this subsection. In determining the extent of injury, the court shall consider that dissemination of an intimate image may cause long-term or permanent injury. The court may award:

(1) Actual damages arising from the incident or \$500, whichever is greater. Damages include loss of money, reputation or property, whether real or personal. The court may, in its discretion, award up to three times the actual damages sustained, but not less than \$500.

(2) Reasonable attorney fees and court costs.

(3) Additional relief the court deems necessary and proper.

(d) *Other remedies preserved.*—Nothing in this section shall be construed to limit the ability of a person to receive restitution under 18 Pa.C.S. § 1106 (relating to restitution for injuries to person or property).

(e) *Nonapplicability.*—The provisions of this section shall not be applicable to a law enforcement officer engaged in the law enforcement officer's official duties.

(f) *Definition.*—As used in this section, the term "law enforcement officer" means any officer of the United States, of the Commonwealth or political subdivision thereof, or of another state or subdivision thereof, who is empowered to conduct investigations of or to make arrests for offenses enumerated in 18 Pa.C.S. (relating to crimes and offenses), or an equivalent crime in another jurisdiction, and any attorney authorized by law to prosecute or participate in the prosecution of such offense.

Section 3. This act shall take effect in 60 days.

APPROVED—The 9th day of July, A.D. 2014

TOM CORBETT