

10-19

OFFICE OF THE
DEMOCRATIC MINORITY



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Inter-Departmental Memo

To: Michael C Pulitzer, Clerk of the Legislature

From: Peter J. Clines, Esq., Minority Counsel *PTC*

CC: Hon. Richard Nicoletto, Presiding Officer

Hon. Kevan Abrahams, Minority Leader

Date: January 22, 2019

Re: LOCAL LAW TO PROTECT AGAINST THE UNLAWFUL DISCLOSURE OF
INTIMATE IMAGES

Attached please find the above referenced proposed resolution which has been approved as to form per the Rules of the Legislature. Kindly distribute a copy to Presiding Officer Richard Nicoletto along with our request that this item be placed on the next available legislative agenda.

Kindly provide a time stamped hard copy acknowledgement of your receipt.

Thank you.

RECEIVED
NASSAU COUNTY
CLERK OF THE LEGISLATURE
2019 JAN 22 A 9:09

Introduced by: Legislators Arnold W. Drucker and Debra Mulé

PROPOSED LOCAL LAW NO. -2019

A LOCAL LAW TO PROTECT AGAINST THE UNLAWFUL DISCLOSURE OF INTIMATE IMAGES

APPROVED AS TO FORM



PETER CLINES MINORITY COUNSEL

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WHEREAS, there has been a disturbing increase in the phenomenon known as “revenge porn”, wherein individuals maliciously disclose sexually explicit images, typically of former sexual partners, without consent of the subject and in order to cause them distress or embarrassment; and

WHEREAS, with the rise of social media and the advent of cyberspace, and the pervasive role the digital world has come to play in our lives, intimate images can be disseminated on literally a global scale in the time it takes to press a key or a touch pad; and

WHEREAS, such dissemination results in an appalling invasion of privacy and terrible humiliation causing potentially devastating emotional pain, suffering, distress, reputational and financial injury to the individuals portrayed in such images; and

WHEREAS, the law of this State does not afford adequate protection to victims of revenge porn; and

WHEREAS, it is the judgment of this Legislature that it is necessary to protect such victims by explicitly prohibiting the non-consensual distribution of such images and affording a remedy for the violation of such prohibition while maintaining the utmost regard for freedom of speech and expression;

THEREFORE, BE IT ENACTED by the County Legislature of the County of Nassau, as follows:

Section 1. Chapter VIII of Chapter 272 of the Laws of 1939 constituting the Nassau County Administrative Code, is hereby amended to add a new Title O, as follows:

TITLE O

UNLAWFUL DISCLOSURE OF INTIMATE IMAGES

§ 8-134.1. Definitions.

Whenever used in this Title, the following words shall have the meanings given to them by this section:

- A. **“Consent” means permission that is knowingly, intelligently and voluntarily given for the particular disclosure at issue.**
- B. **“Covered recipient” means an individual who gains possession of, or access to, an intimate image from a depicted individual, including through the creation of the intimate image.**
- C. **“Depicted individual” means an individual depicted in an intimate image.**
- D. **“Disclose” means to disseminate as that term is defined in New York Penal Law § 250.40(5) or publish as that term is defined in New York Penal Law § 250.40(6).**
- E. **“Intimate image” means a photograph, film, videotape, recording or any other reproduction of a still or moving image, depicting an individual whose intimate parts are exposed in whole or in part or who appears to be engaged in, appears about to be engaged in, or appears to have just been engaged in, a sexual act where the depicted individual did not intend such image be disclosed at the time the covered recipient gained possession of or access to the intimate image. An intimate image does not include any image taken in a public place, as defined in New York Penal Law § 240.00, except if, at the time the image was photographed, filmed, videotaped, recorded or reproduced, an individual in the depicted individual’s position would reasonably have believed that no one other than the covered recipient could view the applicable intimate parts or sexual act while such parts were exposed or such act was occurring.**
- F. **“Intimate parts” means the exposed genitals, pubic area, buttocks, or anus of a person, or nipple or areola of a female person who is 11 years of age or older.**
- G. **“Sexual acts” means sexual intercourse, oral sexual conduct, or anal sexual conduct as those terms are defined in New York Penal Law § 130.00(1) and § 130.00(2); masturbation; mutual masturbation; the insertion of a body part or foreign object into the vulva, penis, or anus or any other touching of the sexual or other intimate parts of a**

person for the purpose of gratifying sexual desire; or the transmission or appearance of semen upon any part of the depicted individual's body.

§ 8-134.2. Unlawful Disclosure of Intimate Images.

- A. **No covered recipient shall, with intent to cause material harm to the physical, mental, emotional or financial welfare of a depicted individual, disclose or threaten to disclose an intimate image of such depicted individual, where:**
1. **The intimate image was created by or provided to the covered recipient under circumstances in which the depicted individual has a reasonable expectation of privacy;**
 2. **The depicted individual is or would be identifiable either from the intimate image or from the circumstances under which such image is disclosed or threatened to be disclosed; and**
 3. **The disclosure or threatened disclosure is without the consent of the depicted individual and did or would occur under circumstances in which a reasonable person would have known that the depicted individual did not consent to disclosure.**

§ 8-134.3. Exemptions.

The prohibitions established in this law shall not apply if:

- A. **The disclosure or threat of disclosure is made in the course of reporting unlawful activity, in the course of a legal proceeding or by law enforcement personnel in conducting their authorized duties.**
- B. **The disclosure is made by a provider of an interactive computer service, as defined in 47 U.S.C. § 230(f)(2), with regard to content provided by another information content provider, as defined in 47 U.S.C. § 230(f)(3).**
- C. **The disclosure or threat of disclosure is made in relation to a matter of legitimate public concern or is otherwise protected by the First Amendment of the United States Constitution.**

§ 8-134.4. Penalties

Violation of this law shall constitute an unclassified misdemeanor, punishable by up to one year's imprisonment and/or a fine of up to \$1,000.00.

§ 8-134.5. Private Civil Cause of Action.

- A. **Any individual who suffers harm from a violation of this law shall have a civil cause of action in any court of competent jurisdiction against the individual who engaged in prohibited conduct. Plaintiffs in such an action may seek to hold the defendant liable for any or all of the following:**

1. Compensatory and punitive damages;
2. Injunctive and declaratory relief;
3. Attorneys' fees and costs; and
4. Such other relief as a court may deem appropriate.

B. The private cause of action established under this section shall not require that a criminal charge be brought, or a criminal conviction be obtained as a condition precedent to the plaintiff commencing a civil action or obtaining a civil judgment.

Section 2. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 3. SEQRA Determination.

It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L., section 0101 at seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that the adoption of this local law is a "Type II" Action within the meaning of Section 617.5(c)(20) and (27) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment, and no further review is required.

Section 4. Effective Date.

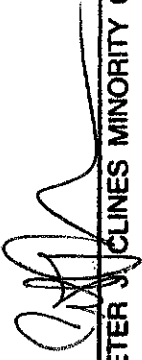
This local law shall take effect immediately after enactment by the Legislature.

Introduced by: Legislators Arnold W. Drucker and Debra Mulé

LOCAL LAW NO. -2019

A LOCAL LAW TO PROTECT AGAINST THE UNLAWFUL DISCLOSURE OF INTIMATE IMAGES

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B. The private cause of action established under this section shall not require that a criminal charge be brought, or a criminal conviction be obtained as a condition precedent to the plaintiff commencing a civil action or obtaining a civil judgment.

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Section 4. Effective Date.

This local law shall take effect immediately after enactment by the Legislature.