

By: Kolkhorst

S.B. No. 1212

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the offense of unlawful disclosure of intimate visual material.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 21, Penal Code, is amended by adding Section 21.16 to read as follows:

Sec. 21.16. UNLAWFUL DISCLOSURE OF INTIMATE VISUAL MATERIAL. (a) In this section:

(1) "Dating relationship" has the meaning assigned by Section 71.0021, Family Code.

(2) "Intimate parts" means the naked genitals, pubic area, anus, buttocks, or female nipple of a person.

(3) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse.

(4) "Simulated" has the meaning assigned by Section 43.25.

(5) "Visual material" has the meaning assigned by Section 43.26.

(b) A person commits an offense if:

(1) without the consent of the depicted person, the actor intentionally displays, distributes, publishes, advertises, offers, or otherwise discloses visual material depicting the person:

1 (A) with the person's intimate parts exposed; or

2 (B) engaged in sexual conduct;

3 (2) the disclosure of the visual material causes
4 severe emotional distress to the depicted person; and

5 (3) the visual material was obtained by the actor or
6 created under circumstances in which the depicted person had a
7 reasonable expectation that the visual material would remain
8 private, or the actor:

9 (A) discloses the visual material with the intent
10 to:

11 (i) harass, annoy, alarm, abuse, torment,
12 or embarrass the person; or

13 (ii) obtain a benefit in return for or in
14 connection with the disclosure; or

15 (B) obtains a benefit in return for or in
16 connection with the disclosure.

17 (c) It is not a defense to prosecution under this section
18 that the depicted person:

19 (1) created or consented to the creation of the visual
20 material; or

21 (2) voluntarily transmitted the visual material to the
22 actor.

23 (d) It is a defense to prosecution under this section that:

24 (1) the disclosure is made in the course of:

25 (A) lawful and common practices of law
26 enforcement or medical treatment;

27 (B) reporting unlawful activity; or

1 (C) a legal proceeding, if the disclosure is
2 permitted or required by law; or

3 (2) the actor is an interactive computer service, as
4 defined by 47 U.S.C. Section 230, and the disclosure consists of
5 visual material provided by another person.

6 (e) An offense under this section is a Class B misdemeanor,
7 except that the offense is:

8 (1) a Class A misdemeanor if it is shown on the trial
9 of the offense that the defendant has previously been convicted one
10 or two times of an offense under this section;

11 (2) a state jail felony if it is shown on the trial of
12 the offense that the defendant has previously been convicted three
13 or more times of an offense under this section; or

14 (3) a felony of the third degree if it is shown on the
15 trial of the offense that:

16 (A) the defendant was 18 years of age or older at
17 the time of the offense; and

18 (B) the depicted person was younger than 18 years
19 of age.

20 (f) At the punishment stage of a trial in which the attorney
21 representing the state seeks the increase in punishment provided by
22 Subsection (e)(3), the defendant may raise the issue as to whether
23 the defendant:

24 (1) was not more than two years older than the depicted
25 person at the time of the offense; and

26 (2) was in a dating relationship with the depicted
27 person when:

1 (A) the visual material was created; or

2 (B) the defendant obtained the visual material.

3 (g) If the defendant proves each issue described by
4 Subsection (f) in the affirmative by a preponderance of the
5 evidence, the increase in punishment provided by Subsection (e)(3)
6 does not apply.

7 (h) If conduct that constitutes an offense under this
8 section also constitutes an offense under another law, the actor
9 may be prosecuted under this section, the other law, or both.

10 SECTION 2. Section 21.16, Penal Code, as added by this Act,
11 applies to visual material disclosed on or after the effective date
12 of this Act, regardless of whether the visual material was created
13 or transmitted to the actor before, on, or after that date.

14 SECTION 3. This Act takes effect September 1, 2015.