A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To criminalize the unauthorized disclosure of a sexual image of another person.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Criminalization of Non-Consensual Pornography Act of 2014”.

Sec. 2. Definitions.

For purposes of this act:

(1) “Disclose” means to transfer or exhibit to 5 or fewer persons.

(2) “Harm” means any injury, whether physical or nonphysical, including psychological, financial, or reputational injury.

(3) “Internet” means an electronically available platform by which sexual images can be disseminated to a wide audience, including social media, websites, and smartphone applications; provided, that the term “Internet” does not include a text message.

(4) “Private area” means the genitals, anus, or pubic area of a person, or the nipple of a developed female breast, including the breast of a transgender female.

(5) “Publish” means to transfer or exhibit to 6 or more individuals, or to make available for viewing by uploading to the Internet.
(6) “Sexual conduct” shall have the same meaning as provided in section 2(5) of the District of Columbia Protection of Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; D.C. Official Code § 22-3101(5)).

(7) “Sexual image” means a photograph, video, or other visual recording of an unclothed private area or of sexual conduct.

Sec. 3. Unlawful disclosure.

(a) It shall be unlawful in the District of Columbia for a person to knowingly disclose one or more sexual images of another identified or identifiable person when:

(1) The person depicted did not consent to the disclosure of the sexual image;

(2) There was an agreement or understanding between the person depicted and the person disclosing that the sexual image would not be disclosed; and

(3) The person disclosed the sexual image with the intent to harm the person depicted or to receive financial gain.

(b) A person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, approved June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), imprisoned for not more than 180 days, or both.

Sec. 4. First-degree unlawful publication.

(a) It shall be unlawful in the District of Columbia for a person to knowingly publish one or more sexual images of another identified or identifiable person when:

(1) The person depicted did not consent to the disclosure or publication of the
sexual image;
(2) There was an agreement or understanding between the person depicted and the person publishing that that the sexual image would not be disclosed or published; and
(3) The person published the sexual image with the intent to harm the person depicted or to receive financial gain.
(b) A person who violates this subsection shall be guilty of a felony and, upon conviction, shall be fined not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, approved June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), imprisoned for not more than 3 years, or both.

Sec. 5. Second degree unlawful publication.
(a) It shall be unlawful in the District of Columbia for a person to knowingly publish one or more sexual images of another identified or identifiable person obtained from a third party or other source when:
(1) The person depicted did not consent to the disclosure or publication of the sexual image;
(2) The person published the sexual image with conscious disregard that the sexual image was obtained as a result of a previous disclosure or publication of the sexual image made with an intent to harm the person depicted.
(b) A person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, approved June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), imprisoned for not more than 3 years, or both.
Proportionality Amendment Act of 2012, approved June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), imprisoned for not more than 180 days, or both.

Sec. 6. Exclusions.

(a) This act shall not apply to:

(1) Constitutionally protected activity; or

(2) A person disclosing or publishing a sexual image that resulted from the voluntary exposure of the person depicted in a public or commercial setting.

(b) Nothing in this act shall be construed to impose liability on an interactive computer service, as defined in Section 230(e)(2) of the Communications Act of 1934, approved February 8, 1995 (110 Stat. 139; 47 U.S.C. 230(f)(2), for content provided by another person.

Sec. 7. Affirmative defenses.

It shall be an affirmative defense to a violation of section 3, 4, or 5 if the disclosure or publication of a sexual image is made in the public interest, including the reporting of unlawful conduct, the lawful and common practices of law enforcement, or legal proceedings.

Sec. 8. Jurisdiction.

A violation of section 3, 4, or 5 shall be deemed to be committed in the District of Columbia if any part of the violation takes place in the District of Columbia, including either the person depicted or the person who disclosed or published the sexual image was a resident of, or located in, the District of Columbia at the time that the sexual image was made, disclosed, or published.

Sec. 9. Fiscal impact statement.
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-106.02(c)(3)).

Sec. 10. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.