

CCRI Model State Law

A person may not knowingly disclose an image of another, identifiable person whose intimate parts are exposed or who is engaged in a sexual act with knowledge of or reckless disregard for the fact that the person depicted did not consent to such disclosure.¹

A. Definitions. For the purposes of this section,

- (1) “Disclose” includes publishing, distributing, or reproducing;
- (2) “Image” includes a photograph, film, videotape, recording, digital, or other visual reproduction;
- (3) “Intimate parts” means the naked genitals, pubic area, anus, or female post-pubescent nipple of the person;
- (4) “Sexual act” includes but is not limited to masturbation; genital, anal, or oral sex; sexual penetration with objects; or the transfer or transmission of semen upon any part of the depicted person’s body.

B. Exceptions. This section does not apply to

- (1) Images involving voluntary exposure in public or commercial settings; or
- (2) Disclosures made in the public interest, including but not limited to the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

C. Severability.

- (1) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

¹ Some legislators may feel that a reference to the depicted person’s reasonable expectation of privacy is necessary. Such a reference could read “and knowledge of or reckless disregard for the fact that the depicted person reasonably expected that the image would remain private.”

The benefit of including such language would be to emphasize that the statute does not apply to images voluntarily created in commercial or public settings. While this point is already addressed in B(1) of the exceptions, including it in the definition of the crime might be helpful in underscoring this aspect.

The drawback of this approach is twofold: 1. The concept of “reasonable expectation of privacy” might create more ambiguity than it resolves, especially considering the doctrinal baggage around the concept in Fourth Amendment jurisprudence; and 2. The concept is ill-suited for situations involving the distribution of imagery depicting sexual assaults in public or semi-public settings, as well as for hacking cases.

If privacy is included as an element, it would be prudent to address these issues explicitly, e.g.: “A person who has consented to the creation or distribution of an image described in this section within the context of a confidential relationship retains a reasonable expectation of privacy beyond that relationship. A person who did not consent to the creation, distribution, or access to an image described in this section has a reasonable expectation of privacy in that image.”