

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1999

68th Legislature
2024 Regular Session

Passed by the House February 8, 2024
Yeas 95 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate February 28,
2024
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1999** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1999

Passed Legislature - 2024 Regular Session

State of Washington

68th Legislature

2024 Regular Session

By House Community Safety, Justice, & Reentry (originally sponsored by Representatives Orwall, Leavitt, Ryu, Duerr, Ramos, Morgan, Taylor, Ormsby, Graham, Callan, Rule, Street, Lekanoff, Reeves, Shavers, and Davis)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to fabricated intimate or sexually explicit
2 images and depictions; amending RCW 9.68A.011, 9.68A.055, 9.68A.110,
3 9.68A.170, 9.68A.180, 9.68A.190, 9A.86.010, 9A.86.020, 7.110.010,
4 7.110.020, 7.110.030, 7.110.050, and 7.110.060; adding a new section
5 to chapter 9A.86 RCW; adding a new section to chapter 7.110 RCW; and
6 prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 9.68A.011 and 2010 c 227 s 3 are each amended to
9 read as follows:

10 Unless the context clearly indicates otherwise, the definitions
11 in this section apply throughout this chapter.

12 (1) An "internet session" means a period of time during which an
13 internet user, using a specific internet protocol address, visits or
14 is logged into an internet site for an uninterrupted period of time.

15 (2) To "photograph" means to make a print, negative, slide,
16 digital image, motion picture, or videotape. A "photograph" means
17 anything tangible or intangible produced by photographing.

18 (3) "Visual or printed matter" means any photograph or other
19 material that contains a reproduction of a photograph. "Visual or
20 printed matter" includes, but is not limited to, any such photograph

1 or other material that constitutes a fabricated depiction of an
2 identifiable minor.

3 (4) "Sexually explicit conduct" means actual or simulated:

4 (a) Sexual intercourse, including genital-genital, oral-genital,
5 anal-genital, or oral-anal, whether between persons of the same or
6 opposite sex or between humans and animals;

7 (b) Penetration of the vagina or rectum by any object;

8 (c) Masturbation;

9 (d) Sadomasochistic abuse;

10 (e) Defecation or urination for the purpose of sexual stimulation
11 of the viewer;

12 (f) Depiction of the genitals or unclothed pubic or rectal areas
13 of any minor, or the unclothed breast of a female minor, for the
14 purpose of sexual stimulation of the viewer. For the purposes of this
15 subsection (4)(f), it is not necessary that the minor know that he or
16 she is participating in the described conduct, or any aspect of it;
17 and

18 (g) Touching of a person's clothed or unclothed genitals, pubic
19 area, buttocks, or breast area for the purpose of sexual stimulation
20 of the viewer.

21 (5) "Minor" means any person under eighteen years of age.

22 (6) "Live performance" means any play, show, skit, dance, or
23 other exhibition performed or presented to or before an audience of
24 one or more, with or without consideration.

25 (7) "Fabricated depiction of an identifiable minor" and
26 "fabricated depiction" mean any visual or printed matter that depicts
27 a minor who is identifiable from the matter itself or from
28 information displayed with or otherwise connected to the matter, and
29 that was created or altered by digitization to depict the minor
30 engaging in sexually explicit conduct in which the minor did not
31 actually engage.

32 (8) "Digitization" means creating or altering any visual or
33 printed matter to depict an identifiable minor in a realistic manner
34 utilizing images of another person or computer-generated images,
35 regardless of whether such creation or alteration is accomplished
36 manually or through an automated process. "Digitization" includes,
37 but is not limited to, creation or alteration of any visual or
38 printed matter by using artificial intelligence.

1 **Sec. 2.** RCW 9.68A.055 and 2019 c 128 s 9 are each amended to
2 read as follows:

3 A minor who possesses any depiction or depictions, including any
4 fabricated depiction or depictions, of any other minor engaged in an
5 act of sexually explicit conduct as defined in RCW 9.68A.011 forfeits
6 any right to continued possession of the depiction or depictions and
7 any court exercising jurisdiction over such depiction or depictions
8 shall order forfeiture of the depiction or depictions to the custody
9 of law enforcement.

10 **Sec. 3.** RCW 9.68A.110 and 2011 c 241 s 4 are each amended to
11 read as follows:

12 (1) In a prosecution under RCW 9.68A.040, it is not a defense
13 that the defendant was involved in activities of law enforcement and
14 prosecution agencies in the investigation and prosecution of criminal
15 offenses. Law enforcement and prosecution agencies shall not employ
16 minors to aid in the investigation of a violation of RCW 9.68A.090 or
17 9.68A.100 through 9.68A.102, except for the purpose of facilitating
18 an investigation where the minor is also the alleged victim and the:

19 (a) Investigation is authorized pursuant to RCW
20 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or

21 (b) Minor's aid in the investigation involves only telephone or
22 electronic communication with the defendant.

23 (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070,
24 or 9.68A.080, it is not a defense that the defendant did not know the
25 age of the child depicted in the visual or printed matter. It is a
26 defense, which the defendant must prove by a preponderance of the
27 evidence, that at the time of the offense the defendant was not in
28 possession of any facts on the basis of which he or she should
29 reasonably have known that the person depicted was a minor.

30 (3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.100,
31 9.68A.101, or 9.68A.102, it is not a defense that the defendant did
32 not know the alleged victim's age. It is a defense, which the
33 defendant must prove by a preponderance of the evidence, that at the
34 time of the offense, the defendant made a reasonable bona fide
35 attempt to ascertain the true age of the minor by requiring
36 production of a driver's license, marriage license, birth
37 certificate, or other governmental or educational identification card
38 or paper and did not rely solely on the oral allegations or apparent
39 age of the minor.

1 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070,
2 or 9.68A.075, it shall be an affirmative defense that the defendant
3 was a law enforcement officer or a person specifically authorized, in
4 writing, to assist a law enforcement officer and acting at the
5 direction of a law enforcement officer in the process of conducting
6 an official investigation of a sex-related crime against a minor, or
7 that the defendant was providing individual case treatment as a
8 recognized medical facility or as a psychiatrist or psychologist
9 licensed under Title 18 RCW. Nothing in chapter 227, Laws of 2010 is
10 intended to in any way affect or diminish the immunity afforded an
11 electronic communication service provider, remote computing service
12 provider, or domain name registrar acting in the performance of its
13 reporting or preservation responsibilities under 18 U.S.C. Secs.
14 2258a, 2258b, or 2258c.

15 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070,
16 or 9.68A.075, the state is not required to establish the identity of
17 the alleged victim unless the charged offense involves a fabricated
18 depiction.

19 (6) In a prosecution under RCW 9.68A.070 or 9.68A.075, it shall
20 be an affirmative defense that:

21 (a) The defendant was employed at or conducting research in
22 partnership or in cooperation with any institution of higher
23 education as defined in RCW 28B.07.020 or 28B.10.016, and:

24 (i) He or she was engaged in a research activity;

25 (ii) The research activity was specifically approved prior to the
26 possession or viewing activity being conducted in writing by a
27 person, or other such entity vested with the authority to grant such
28 approval by the institution of higher education; and

29 (iii) Viewing or possessing the visual or printed matter is an
30 essential component of the authorized research; or

31 (b) The defendant was an employee of the Washington state
32 legislature engaged in research at the request of a member of the
33 legislature and:

34 (i) The request for research is made prior to the possession or
35 viewing activity being conducted in writing by a member of the
36 legislature;

37 (ii) The research is directly related to a legislative activity;
38 and

1 (iii) Viewing or possessing the visual or printed matter is an
2 essential component of the requested research and legislative
3 activity.

4 (7) In a prosecution under RCW 9.68A.050, 9.68A.053, 9.68A.060,
5 9.68A.070, or 9.68A.075 where the charged offense involves a
6 fabricated depiction, it is not a defense that the defendant lacked
7 knowledge of whether the fabricated depiction had been created or
8 altered by digitization.

9 (8) Nothing in this section authorizes otherwise unlawful viewing
10 or possession of visual or printed matter depicting a minor engaged
11 in sexually explicit conduct.

12 **Sec. 4.** RCW 9.68A.170 and 2012 c 135 s 2 are each amended to
13 read as follows:

14 (1) In any criminal proceeding, any property or material that
15 constitutes a depiction of a minor engaged in sexually explicit
16 conduct, including any fabricated depictions, shall remain in the
17 care, custody, and control of either a law enforcement agency or the
18 court.

19 (2) Despite any request by the defendant or prosecution, any
20 property or material that constitutes a depiction of a minor engaged
21 in sexually explicit conduct, including any fabricated depictions,
22 shall not be copied, photographed, duplicated, or otherwise
23 reproduced, so long as the property or material is made reasonably
24 available to the parties. Such property or material shall be deemed
25 to be reasonably available to the parties if the prosecution, defense
26 counsel, or any individual sought to be qualified to furnish expert
27 testimony at trial has ample opportunity for inspection, viewing, and
28 examination of the property or material at a law enforcement facility
29 or a neutral facility approved by the court upon petition by the
30 defense.

31 (3) The defendant may view and examine the property and materials
32 only while in the presence of his or her attorney. If the defendant
33 is proceeding pro se, the court will appoint an individual to
34 supervise the defendant while he or she examines the materials.

35 (4) The court may direct that a mirror image of a computer hard
36 drive containing such depictions be produced for use by an expert
37 only upon a showing that an expert has been retained and is prepared
38 to conduct a forensic examination while the mirror imaged hard drive
39 remains in the care, custody, and control of a law enforcement agency

1 or the court. Upon a substantial showing that the expert's analysis
2 cannot be accomplished while the mirror imaged hard drive is kept
3 within the care, custody, and control of a law enforcement agency or
4 the court, the court may order its release to the expert for analysis
5 for a limited time. If release is granted, the court shall issue a
6 protective order setting forth such terms and conditions as are
7 necessary to protect the rights of the victims, to document the chain
8 of custody, and to protect physical evidence.

9 **Sec. 5.** RCW 9.68A.180 and 2012 c 135 s 3 are each amended to
10 read as follows:

11 (1) Whenever a depiction of a minor engaged in sexually explicit
12 conduct, regardless of its format and whether it is a fabricated
13 depiction, is marked as an exhibit in a criminal proceeding, the
14 prosecutor shall seek an order sealing the exhibit at the close of
15 the trial. Any exhibits sealed under this section shall be sealed
16 with evidence tape in a manner that prevents access to, or viewing
17 of, the depiction of a minor engaged in sexually explicit conduct and
18 shall be labeled so as to identify its contents. Anyone seeking to
19 view such an exhibit must obtain permission from the superior court
20 after providing at least ten days notice to the prosecuting attorney.
21 Appellate attorneys for the defendant and the state shall be given
22 access to the exhibit, which must remain in the care and custody of
23 either a law enforcement agency or the court. Any other person moving
24 to view such an exhibit must demonstrate to the court that his or her
25 reason for viewing the exhibit is of sufficient importance to justify
26 another violation of the victim's privacy.

27 (2) Whenever the clerk of the court receives an exhibit of a
28 depiction of a minor engaged in sexually explicit conduct, he or she
29 shall store the exhibit in a secure location, such as a safe. The
30 clerk may arrange for the transfer of such exhibits to a law
31 enforcement agency evidence room for safekeeping provided the agency
32 agrees not to destroy or dispose of the exhibits without an order of
33 the court.

34 (3) If the criminal proceeding ends in a conviction, the clerk of
35 the court shall destroy any exhibit containing a depiction of a minor
36 engaged in sexually explicit conduct, including any fabricated
37 depictions, five years after the judgment is final, as determined by
38 the provisions of RCW 10.73.090(3). Before any destruction, the clerk
39 shall contact the prosecuting attorney and verify that there is no

1 collateral attack on the judgment pending in any court. If the
2 criminal proceeding ends in a mistrial, the clerk shall either
3 maintain the exhibit or return it to the law enforcement agency that
4 investigated the criminal charges for safekeeping until the matter is
5 set for retrial. If the criminal proceeding ends in an acquittal, the
6 clerk shall return the exhibit to the law enforcement agency that
7 investigated the criminal charges for either safekeeping or
8 destruction.

9 **Sec. 6.** RCW 9.68A.190 and 2012 c 135 s 4 are each amended to
10 read as follows:

11 Any depiction of a minor engaged in sexually explicit conduct, in
12 any format and including any fabricated depictions, distributed as
13 discovery to defense counsel or an expert witness prior to June 7,
14 2012, shall either be returned to the law enforcement agency that
15 investigated the criminal charges or destroyed, if the case is no
16 longer pending in superior court. If the case is still pending, the
17 depiction shall be returned to the superior court judge assigned to
18 the case or the presiding judge. The court shall order either the
19 destruction of the depiction or the safekeeping of the depiction if
20 it will be used at trial.

21 It is not a defense to violations of this chapter for crimes
22 committed after December 31, 2012, that the initial receipt of the
23 depictions was done under the color of law through the discovery
24 process.

25 NEW SECTION. **Sec. 7.** A new section is added to chapter 9A.86
26 RCW to read as follows:

27 (1) A person commits the crime of disclosing fabricated intimate
28 images when the person knowingly discloses a fabricated intimate
29 image of another person and the person disclosing the image:

30 (a) Knows or should have known that the depicted person has not
31 consented to the disclosure; and

32 (b) Knows or reasonably should know that disclosure would cause
33 harm to the depicted person.

34 (2) A person who is under the age of 18 is not guilty of the
35 crime of disclosing fabricated intimate images unless the person:

36 (a) Intentionally and maliciously disclosed a fabricated intimate
37 image of another person; and

1 (b) Knows or should have known that the depicted person has not
2 consented to the disclosure.

3 (3) This section does not apply to:

4 (a) Disclosures made in the public interest including, but not
5 limited to, the reporting of unlawful conduct, or the lawful and
6 common practices of law enforcement, criminal reporting, legal
7 proceedings, or medical treatment; or

8 (b) Images that constitute commentary, criticism, or disclosure
9 protected by the Washington state Constitution or the United States
10 Constitution.

11 (4) This section does not impose liability upon the following
12 entities solely as a result of content provided by another person:

13 (a) An interactive computer service, as defined in Title 47
14 U.S.C. Sec. 230(f)(2);

15 (b) A mobile telecommunications service provider, as defined in
16 RCW 82.04.065; or

17 (c) A telecommunications network or broadband provider.

18 (5) In any prosecution for a violation of this section, it is not
19 a defense that:

20 (a) The perpetrator lacked knowledge of whether the disclosed
21 image had been created or altered by digitization; or

22 (b) The depicted person consented to the creation or alteration
23 of the image.

24 (6) For purposes of this section:

25 (a) "Digitization" means creating or altering an image of a
26 person in a realistic manner utilizing images of another person or
27 computer-generated images, regardless of whether such creation or
28 alteration is accomplished manually or through an automated process.
29 "Digitization" includes, but is not limited to, creation or
30 alteration of an image by using artificial intelligence.

31 (b) "Disclosing" includes transferring, publishing, or
32 disseminating, as well as making a digital depiction available for
33 distribution or downloading through the facilities of a
34 telecommunications network or through any other means of transferring
35 computer programs or data to a computer.

36 (c) "Fabricated intimate image" means any photograph, motion
37 picture film, videotape, digital image, or any other recording or
38 transmission of another person who is identifiable from the image
39 itself or from information displayed with or otherwise connected to
40 the image, and that was created or altered by digitization to depict:

1 (i) Computer-generated intimate body parts or the intimate body
2 parts of another person as the intimate body parts of the depicted
3 person, whether nude or visible through less than opaque clothing and
4 including the genitals, pubic area, anus, or postpubescent female
5 nipple; or

6 (ii) The depicted person engaging in sexual activity, including
7 masturbation, sexual contact, or sexual intercourse, as those terms
8 are defined in RCW 9A.44.010, in which the depicted person did not
9 actually engage.

10 (7) The crime of disclosing fabricated intimate images:

11 (a) Is a gross misdemeanor on the first offense; or

12 (b) Is a class C felony if the defendant has one or more prior
13 convictions for a violation of this section or RCW 9A.86.010.

14 (8) Nothing in this section is construed to:

15 (a) Alter or negate any rights, obligations, or immunities of an
16 interactive service provider under Title 47 U.S.C. Sec. 230; or

17 (b) Limit or preclude a plaintiff from securing or recovering any
18 other available remedy.

19 **Sec. 8.** RCW 9A.86.010 and 2016 c 91 s 1 are each amended to read
20 as follows:

21 (1) A person commits the crime of disclosing intimate images when
22 the person knowingly discloses an intimate image of another person
23 and the person disclosing the image:

24 (a) Obtained it under circumstances in which a reasonable person
25 would know or understand that the image was to remain private;

26 (b) Knows or should have known that the depicted person has not
27 consented to the disclosure; and

28 (c) Knows or reasonably should know that disclosure would cause
29 harm to the depicted person.

30 (2) A person who is under the age of eighteen is not guilty of
31 the crime of disclosing intimate images unless the person:

32 (a) Intentionally and maliciously disclosed an intimate image of
33 another person;

34 (b) Obtained it under circumstances in which a reasonable person
35 would know or understand that the image was to remain private; and

36 (c) Knows or should have known that the depicted person has not
37 consented to the disclosure.

38 (3) This section does not apply to:

1 (a) Images involving voluntary exposure in public or commercial
2 settings; or

3 (b) Disclosures made in the public interest including, but not
4 limited to, the reporting of unlawful conduct, or the lawful and
5 common practices of law enforcement, criminal reporting, legal
6 proceedings, or medical treatment.

7 (4) This section does not impose liability upon the following
8 entities solely as a result of content provided by another person:

9 (a) An interactive computer service, as defined in 47 U.S.C. Sec.
10 230(f)(2);

11 (b) A mobile telecommunications service provider, as defined in
12 RCW 82.04.065; or

13 (c) A telecommunications network or broadband provider.

14 (5) It shall be an affirmative defense to a violation of this
15 section that the defendant is a family member of a minor and did not
16 intend any harm or harassment in disclosing the images of the minor
17 to other family or friends of the defendant. This affirmative defense
18 shall not apply to matters defined under RCW 9.68A.011.

19 (6) For purposes of this section:

20 (a) "Disclosing" includes transferring, publishing, or
21 disseminating, as well as making a digital depiction available for
22 distribution or downloading through the facilities of a
23 telecommunications network or through any other means of transferring
24 computer programs or data to a computer;

25 (b) "Intimate image" means any photograph, motion picture film,
26 videotape, digital image, or any other recording or transmission of
27 another person who is identifiable from the image itself or from
28 information displayed with or otherwise connected to the image, and
29 that was taken in a private setting, is not a matter of public
30 concern, and depicts:

31 (i) Sexual activity, including sexual intercourse as defined in
32 RCW 9A.44.010 and masturbation; or

33 (ii) A person's intimate body parts, whether nude or visible
34 through less than opaque clothing, including the genitals, pubic
35 area, anus, or postpubescent female nipple.

36 (7) The crime of disclosing intimate images:

37 (a) Is a gross misdemeanor on the first offense; or

38 (b) Is a class C felony if the defendant has one or more prior
39 convictions for ~~((disclosing intimate images))~~ a violation of this
40 section or section 7 of this act.

1 (8) Nothing in this section is construed to:

2 (a) Alter or negate any rights, obligations, or immunities of an
3 interactive service provider under 47 U.S.C. Sec. 230; or

4 (b) Limit or preclude a plaintiff from securing or recovering any
5 other available remedy.

6 **Sec. 9.** RCW 9A.86.020 and 2019 c 128 s 10 are each amended to
7 read as follows:

8 A minor who possesses any image of any other minor which
9 constitutes an intimate image as defined in RCW 9A.86.010 or a
10 fabricated intimate image as defined in section 7 of this act
11 forfeits any right to continued possession of the image and any court
12 exercising jurisdiction over such image shall order forfeiture of the
13 image.

14 **Sec. 10.** RCW 7.110.010 and 2023 c 65 s 2 are each amended to
15 read as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

18 (1) "Child" means an unemancipated individual who is less than 18
19 years of age.

20 (2) "Consent" means affirmative, conscious, and voluntary
21 authorization by an individual with legal capacity to give
22 authorization.

23 ~~((+2))~~ (3) "Depicted individual" means an individual whose body
24 is shown in whole or in part in an intimate image or a fabricated
25 intimate image.

26 (4) "Digitization" means creating or altering an image of a
27 person in a realistic manner by utilizing images of another person or
28 computer-generated images, regardless of whether such creation or
29 alteration is accomplished manually or through an automated process.
30 "Digitization" includes, but is not limited to, creating or altering
31 an image with the use of artificial intelligence.

32 ~~((+3))~~ (5) "Disclosing" has the same meaning as provided in RCW
33 9A.86.010. "Disclosure" has the same meaning as "disclosing."

34 ~~((+4))~~ (6) "Fabricated intimate image" means any photograph,
35 motion picture film, videotape, digital image or video, or any other
36 recording or visual depiction of an identifiable depicted individual
37 that was created or altered by digitization and that depicts:

1 (a) Computer-generated intimate body parts or the intimate body
2 parts of another human being as the intimate body parts of the
3 depicted individual, whether nude or visible through less than opaque
4 clothing and including the genitals, pubic area, anus, or
5 postpubescent female nipple; or

6 (b) The depicted individual engaging in sexual activity,
7 including masturbation, sexual contact, or sexual intercourse, as
8 those terms are defined in RCW 9A.44.010, in which the depicted
9 individual did not engage.

10 (7) "Harm" includes physical harm, economic harm, and emotional
11 distress whether or not accompanied by physical or economic harm.

12 (8) "Identifiable" means recognizable by a person other than the
13 depicted individual:

14 (a) From an intimate image or fabricated intimate image itself;
15 or

16 (b) From an intimate image or fabricated intimate image and
17 identifying characteristic displayed in connection with the intimate
18 image.

19 ~~((+5))~~ (9) "Identifying characteristic" means information that
20 may be used to identify a depicted individual.

21 ~~((+6))~~ (10) "Individual" means a human being.

22 ~~((+7))~~ (11) "Intimate image" has the same meaning as provided in
23 RCW 9A.86.010.

24 ~~((+8))~~ (12) "Parent" has the same meaning as provided in RCW
25 26.26A.010.

26 (13) "Person" means an individual, estate, business or nonprofit
27 entity, public corporation, government or governmental subdivision,
28 agency or instrumentality, or other legal entity.

29 (14) "Private" means:

30 (a) Created or obtained under circumstances in which a depicted
31 individual had a reasonable expectation of privacy; or

32 (b) Made accessible through theft, bribery, extortion, fraud,
33 false pretenses, voyeurism, or exceeding authorized access to an
34 account, message, file, device, resource, or property.

35 **Sec. 11.** RCW 7.110.020 and 2023 c 65 s 3 are each amended to
36 read as follows:

37 ~~(1) ((For the purposes of this section:~~

38 ~~(a) "Harm" includes physical harm, economic harm, and emotional~~
39 ~~distress whether or not accompanied by physical or economic harm.~~

1 ~~(b) "Private" means:~~

2 ~~(i) Created or obtained under circumstances in which a depicted~~
3 ~~individual had a reasonable expectation of privacy; or~~

4 ~~(ii) Made accessible through theft, bribery, extortion, fraud,~~
5 ~~false pretenses, voyeurism, or exceeding authorized access to an~~
6 ~~account, message, file, device, resource, or property.~~

7 ~~(2))~~ Except as otherwise provided in RCW 7.110.030, a depicted
8 individual who is identifiable and who suffers harm from a person's
9 intentional disclosure or threatened disclosure of an intimate image
10 that was private without the depicted individual's consent has a
11 cause of action against the person if the person knew or acted with
12 reckless disregard for whether:

13 (a) The depicted individual did not consent to the disclosure;

14 (b) The intimate image was private; and

15 (c) The depicted individual was identifiable.

16 ~~((3))~~ (2) The following conduct by a depicted individual does
17 not establish by itself that the individual consented to the
18 disclosure of the intimate image which is the subject of an action
19 under this chapter or that the individual lacked a reasonable
20 expectation of privacy:

21 (a) Consent to creation of the image; or

22 (b) Previous consensual disclosure of the image.

23 ~~((4))~~ (3) A depicted individual who does not consent to the
24 uncovering of the part of the body depicted in an intimate image of
25 the individual retains a reasonable expectation of privacy even if
26 the image was created when the individual was in a public place.

27 NEW SECTION. **Sec. 12.** A new section is added to chapter 7.110
28 RCW to read as follows:

29 (1) A depicted individual who is identifiable and who suffers
30 harm from a person's intentional disclosure or threatened disclosure
31 of a fabricated intimate image without the depicted individual's
32 consent has a cause of action against the person if the person knew
33 or acted with reckless disregard for whether:

34 (a) The depicted individual did not consent to the disclosure;
35 and

36 (b) The depicted individual was identifiable.

37 (2)(a) A depicted individual's consent to the creation of the
38 fabricated intimate image does not by itself establish that the
39 depicted individual consented to its disclosure.

(b) Consent is deemed validly given only if:

(i) It is set forth in an agreement written in plain language signed knowingly and voluntarily by the depicted individual; and

(ii) It includes a general description of the fabricated intimate image and, if applicable, the audiovisual work into which it will be incorporated.

(3) It is not a defense to an action under this section that there is a disclaimer stating that the fabricated intimate image of the depicted individual was unauthorized or that the depicted individual did not participate in the creation or development of the fabricated intimate image.

Sec. 13. RCW 7.110.030 and 2023 c 65 s 4 are each amended to read as follows:

(1) ~~((For the purposes of this section:~~

~~(a) "Child" means an unemancipated individual who is less than 18 years of age.~~

~~(b) "Parent" has the same meaning as provided in RCW 26.26A.010.~~

~~(2))~~ A person is not liable under this chapter if the person proves that disclosure of, or a threat to disclose, an intimate image or fabricated intimate image was:

(a) Made in good faith in:

(i) Law enforcement activities;

(ii) A legal proceeding; or

(iii) Medical education or treatment;

(b) Made in good faith in the reporting or investigation of:

(i) Unlawful conduct; or

(ii) Unsolicited and unwelcome conduct;

(c) Related to a matter of public concern or public interest; or

(d) Reasonably intended to assist the depicted individual.

~~((3) Subject))~~ (2) In an action brought under RCW 7.110.020 and subject to subsection ((4)) (3) of this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under this chapter for a disclosure or threatened disclosure of an intimate image, as defined in RCW 7.110.010((7)) (11), of the child.

~~((4))~~ (3) If a defendant asserts an exception to liability under subsection ~~((3))~~ (2) of this section, the exception does not apply if the plaintiff proves the disclosure was:

(a) Prohibited by law other than this chapter; or

(b) Made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

~~((4))~~ (4) Disclosure of, or a threat to disclose, an intimate image or fabricated intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

(5) A person is not liable in an action brought under section 12 of this act if the fabricated intimate image is commentary, criticism, or disclosure protected by the Washington state Constitution or the United States Constitution.

Sec. 14. RCW 7.110.050 and 2023 c 65 s 6 are each amended to read as follows:

(1) In an action under this chapter, a prevailing plaintiff may recover:

(a) The greater of:

(i) Economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress whether or not accompanied by other damages; or

(ii) Statutory damages not to exceed \$10,000 against each defendant found liable under this chapter for all disclosures and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action. In determining the amount of statutory damages under this subsection (1)(a)(ii), consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the intimate image or fabricated intimate image by the defendant, and other exacerbating or mitigating factors;

(b) An amount equal to any monetary gain made by the defendant from disclosure of the intimate image or fabricated intimate image; and

(c) Punitive damages in an amount not to exceed three times the amount of damages under (a) of this subsection.

(2) In an action under this chapter, the court may award a prevailing plaintiff:

(a) Reasonable attorneys' fees and costs; and

(b) Additional relief, including injunctive relief.

1 (3) This chapter does not affect a right or remedy available
2 under law of this state other than this chapter.

3 **Sec. 15.** RCW 7.110.060 and 2023 c 65 s 7 are each amended to
4 read as follows:

5 (1) An action under RCW 7.110.020(~~((2))~~) or section 12 of this
6 act for:

7 (a) An unauthorized disclosure may not be brought later than four
8 years from the date the disclosure was discovered or should have been
9 discovered with the exercise of reasonable diligence; and

10 (b) A threat to disclose may not be brought later than four years
11 from the date of the threat to disclose.

12 (2) Except as otherwise provided in subsection (3) of this
13 section, this section is subject to the tolling statutes of this
14 state.

15 (3) In an action under RCW 7.110.020(~~((2))~~) or section 12 of this
16 act by a depicted individual who was a minor on the date of the
17 disclosure or threat to disclose, the time specified in subsection
18 (1)(~~((a))~~) of this section does not begin to run until the depicted
19 individual attains the age of majority.

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