

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

CRIMINAL CODE AMENDMENT (NON-CONSENSUAL SHARING OF INTIMATE IMAGES) ACT 2021

WHEREAS it is expedient to amend the Criminal Code Act 1907 relating to non-consensual sharing of intimate images or threats to share such images; observations or recordings that are made in breach of privacy and to make connected and related provision;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Criminal Code Act 1907 (the "principal Act"), may be cited as the Criminal Code Amendment (Non-Consensual Sharing of Intimate Images) Act 2021.

Amends section 176A

2 The principal Act is amended in section 176A by inserting in the appropriate alphabetical order the following—

“intimate image”—

- (a) means a moving or still image that depicts—
 - (i) the person engaged in an intimate sexual activity that is not ordinarily done in public;
 - (ii) the person's genital or anal region, when it is bare or covered only by underwear; or
 - (iii) the person's breasts;
- (b) includes an image that has been altered to appear to show any of the things mentioned in paragraph (a); and
- (c) includes an image depicting a thing mentioned in paragraph (a), even if the thing has been digitally obscured, if the person is depicted in a sexual way;

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“private act” means—

- (a) showering or bathing;
- (b) using a toilet;
- (c) another activity when a person is in a state of undress; or
- (d) intimate sexual activity that is not ordinarily done in public;

“private place” means a place where a person might reasonably be expected to be engaging in a private act;

“prohibited visual recording”, of a person, means—

- (a) a visual recording of the person, in a private place or engaging in a private act, made in circumstances where a reasonable adult would expect to be afforded privacy; or
- (b) a visual recording of the person’s genital or anal region, when it is bare or covered only by underwear, made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region.”.

Inserts sections 199A to 199E

3 The principal Act is amended by inserting after section 199 the following—

“Observations or recordings in breach of privacy

199A (1) A person who without lawful authority observes or visually records another person, in circumstances where a reasonable adult would expect to be afforded privacy—

- (a) without the other person’s consent; and
- (b) when the other person—
 - (i) is in a private place; or
 - (ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act,

commits an offence.

(2) A person who without lawful authority observes or visually records another person’s genital or anal region, in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region—

- (a) without the other person’s consent; and
- (b) when the observation or visual recording is made for the purpose of observing or visually recording the other person’s genital or anal region,

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commits an offence.

- (3) A person convicted of an offence under subsection (1) or (2) is liable—
 - (a) on summary conviction to a term of imprisonment not exceeding three years;
 - (b) on conviction on indictment to a term of imprisonment not exceeding five years.

Distributing intimate images

199B (1) A person who distributes an intimate image of another person—

- (a) without the other person's consent; and
- (b) in a way that would cause the other person distress reasonably arising in all the circumstances,

commits an offence.

- (2) A person convicted of an offence under subsection (1) is liable—
 - (a) on summary conviction to a term of imprisonment not exceeding three years;
 - (b) on conviction on indictment to a term of imprisonment not exceeding five years.

(3) For subsection (1)(b), it is immaterial whether the person who distributes the intimate image intends to cause, or actually causes, the other person distress.

(4) A person shall not be convicted of an offence under this section if it is proved that the act in question that is alleged to constitute the offence is justified as being for the public good on the ground that it is in the interest of the administration of justice or science, medicine or education.

(5) Whether the act in question is justified as being for the public good is to be a question of fact.

Distributing prohibited visual recordings

199C (1) A person who distributes a prohibited visual recording of another person having reason to believe it to be a prohibited visual recording, without the other person's consent, commits an offence.

- (2) A person convicted of an offence under subsection (1) is liable—
 - (a) on summary conviction to a term of imprisonment not exceeding three years;
 - (b) on conviction on indictment to a term of imprisonment not exceeding five years.

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Threats to distribute intimate image or prohibited visual recording

- 199D (1) A person commits an offence if—
- (a) the person makes a threat to another person to distribute an intimate image or prohibited visual recording of the other person—
 - (i) without the other person's consent;
 - (ii) in a way that would cause the other person distress reasonably arising in all the circumstances; and
 - (b) the threat is made in a way that would cause the other person fear, reasonably arising in all the circumstances, of the threat being carried out.
- (2) A person commits an offence if—
- (a) the person makes a threat to another person (person A) to distribute an intimate image or prohibited visual recording of another person (person B)—
 - (i) without person B's consent;
 - (ii) in a way that would cause either person A or person B distress reasonably arising in all the circumstances; and
 - (b) the threat is made in a way that would cause person A fear, reasonably arising in all the circumstances, of the threat being carried out.
- (3) A person convicted of an offence under subsection (1) or (2) is liable—
- (a) on summary conviction to a term of imprisonment not exceeding three years;
 - (b) on conviction on indictment to a term of imprisonment not exceeding five years.
- (4) For subsections (1) and (2) it is immaterial whether—
- (a) the intimate image or prohibited visual recording exists or does not exist; or
 - (b) the person who makes the threat intends to cause, or actually causes, the fear mentioned in the subsection.

Rectification order—offence against section 199A, 199B, 199C or 199D

- 199E (1) If a person is convicted of an offence against either section 199A, 199B, 199C or 199D, the court before which he is convicted may order the person to take reasonable action to remove, retract, recover, delete or destroy an intimate image or visual recording involved in the offence within a stated period.

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(2) A person who fails to comply with an order made under subsection (1) commits an offence.

(3) A person convicted of an offence under subsection (2) is liable on summary conviction to a term of imprisonment not exceeding twelve months. ”

Commencement

4 This Act shall come into operation on such day as the Minister responsible for justice shall appoint by Notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Criminal Code Act 1907 to create new offences related to non-consensual sharing of intimate images or prohibited visual recordings that would apply to sending, or threatening to send, intimate images or recordings without consent and related and connected matters. This Bill also creates the offence of observations or visual recordings in breach of privacy.

Clause 1 provides a title for this Bill.

Clause 2 amends section 176A of the Criminal Code Act 1907 to insert the definitions of “intimate image”, “prohibited visual recording”, “private act” and “private place”.

Clause 3 inserts sections 199A, 199B, 199C, 199D and 199E in the Criminal Code as set forth below.

Section 199A creates an offence where a person interferes with personal privacy by observing others in breach of their privacy.

Section 199B creates an offence of distributing an intimate image of another person without that person’s consent:

- Subsection (1) of section 199B provides that a person who distributes an intimate image of another person, without that person’s consent, and in a way that would cause the other person distress reasonably arising in all of the circumstances commits an offence.
- Subsection (2) provides the penalty for the offence.
- Subsection (3) provides that it is immaterial whether the person who distributes the intimate image intends to cause or actually causes distress.
- Subsections (4) and (5) provide a defence where the alleged conduct was for specified purposes and was in the circumstances justified for such purpose.

Section 199C creates an offence of distributing a prohibited visual recording of another person without that person’s consent:

- Subsection (1) of section 199C provides that a person who distributes prohibited visual recording of another person, having reason to believe that it is such recording, commits an offence.
- Subsection (2) provides the penalty for the offence.

Section 199D creates two new offences to prohibit threats to distribute, without consent, an intimate image, or prohibited visual recording, including where the material may not exist:

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- Subsection (1) of section 199D provides that a person commits an offence if the person makes a threat to the subject of an intimate image or prohibited visual recording to distribute, without consent, such intimate image or prohibited visual recording, and in circumstances where the threat would cause the other person who is threatened distress or fear, reasonably arising in all the circumstances that the threat would be carried out.
- Subsection (2) provides that a person commits an offence if the person makes a threat to another person (person A) to distribute an intimate image or prohibited visual recording of a third person (person B) without the consent of the person depicted (person B), and in a way that would cause either the person depicted (person B) or the person threatened (person A) distress or fear, reasonably arising in all the circumstances, that the threat would be carried out.
- Subsection (3) sets forth the penalty for an offence under subsection (1) or (2).
- Subsection (4) confirms that, for either of the offences in subsection (1) or (2), it is immaterial whether the intimate image or prohibited visual recording exists or does not exist or whether the person who made the threat intends to cause or actually causes distress or fear that the threat would be carried out.

Section 199E will empower the court to order removal or retraction of distributed images or visual recordings upon conviction of the new offences provided for in this Bill. Failure to comply with such an order will be an offence with a maximum penalty of twelve months' imprisonment.

Clause 4 provides for the commencement of this Bill.