



BERMUDA

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

2021 : 20

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;

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

- (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;

“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—

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

- (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,

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—

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

- (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.

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.

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

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.

(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.

[Assent Date: 31 March 2021]

[Operative Date: 15 June 2021]