WEST VIRGINIA CODE: §61-8-28A

§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.

(a) As used in this section:

(1) “Disclose” means to publish, publicly display, distribute, deliver, circulate or disseminate by any means, including, but not limited to, electronic transmission.

(2) “Image” means a photograph, videotape, motion picture film, digital recording or any product of any mechanical or electronic recording process or device that can preserve, for later viewing, a visual image.

(3) “Intimate parts” means a person’s genitalia, pubic area, anus, or female post-pubescent breasts.

(4) To “publicly disclose” means to disclose an image to one or more persons other than those persons whom the person depicted understood would view the image at the time it was captured.

(5) “Fabricated intimate image” means an image of an identifiable depicted individual that was created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs and depicts computer-generated intimate parts or the intimate parts of another human being as the intimate parts of the depicted individual.

(b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, a fabricated intimate image of another or an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed.

(c)(1) A person convicted of a violation of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, fined not less than $1,000 nor more than $5,000, or both confined and fined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted of a second or subsequent violation of subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not more than three years, fined not less than $2,500 nor more than $10,000, or both imprisoned and fined.

(d) The provisions of this section do not apply to:

WV Legislature

(1) Images disclosed with the prior written consent of the person depicted;

(2) Images depicting the person voluntarily exposing himself or herself in a public or commercial setting; or

(3) Disclosures made through the reporting of illegal conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceeding or medical treatment.

(e) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C. §153(53), for content provided by another person.

WV Legislature