

(H. B. 547)

(No. 21-2021)

(Approved August 5, 2021)

AN ACT

To create the “Puerto Rico Act Against Revenge Porn,” in order to classify as an offense the distribution and publication of any explicit material of an intimate or sexual nature; establish penalties; and for other purposes.

STATEMENT OF MOTIVES

In Puerto Rico, like many other countries around the world, we are besieged by technology. Technology is present in everything we do, including the most intimate moments of our life. Even though the Constitution of the Commonwealth of Puerto Rico and the Legislative Assembly recognize the importance of the right to intimacy and that no legislation which threatens the fundamental right of every person to engage in the sexual activity he or she deems pertinent shall be enacted, it is deemed appropriate to legislate against the irresponsible use, as many people have done, of explicit content created during the intimate moments of a relationship.

As a result of the accelerated growth and evolution of telecommunications, traditional means of communication have been replaced by digital communications, mainly mobile phones, computers, and tablets. Naturally, interpersonal communication has changed with the proliferation of digital communication and our current legislation is inadequate to protect private information. The arrival of the digital or information age was accompanied by the arrival of social media platforms and platforms for the exchange of all types of documents. These platforms have a high user base and facilitate the exchange of digital documents between users. The

aforementioned documents are usually of an intimate nature and thus highly confidential.

Both state and federal authorities have recently noted an increase in the conduct known as sextorsion. Sextorsion is when a person extorts another by threatening them with the distribution or publication of intimate, private, or compromising material. We have also witnessed how victims have had their intimate or private material distributed in an abusive manner despite the fact that consent was only given for the creation of such material and not for the distribution thereof. Such material is distributed for the sole purpose of harming and shaming one or all the parties involved in the recording or digital document. All of the aforementioned actions submit the victims of such distribution to pressures, ridicule, and psychological and emotional harm which affects their family, school, and professional lives.

It is thus necessary to recognize and address cases in which one of the persons who is the object of the material published uses any material, whether it be photos, videos, or any other format, that contains images of sexual relations or of the person and which was not created for pornographic purposes, and distributes or shares such material with a third party or uses it for such purposes.

This practice has become notorious among celebrities who have had their videos or photos “stolen” and released for the sole purpose of harming them or tarnishing their reputations. However, this practice is not limited to celebrities and regular citizens are also affected. For such reason, it is of the utmost importance that this Legislative Assembly take action to prevent and punish this practice which diminishes the dignity of individuals during the most intimate moments of their lives.

This type of legislation is neither novel nor unique, but rather has been implemented in various jurisdictions of the United States of America. At present,

forty-eight (48) states, Washington D.C., and Guam have taken progressive steps with regards to this issue by approving legislation to such effects. It is the duty of this Legislative Assembly to adjust our code of laws to the new social realities, therefore, we deem it urgent to approve legislation to such effects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- This Act shall be known as the “Puerto Rico Act Against Revenge Porn.”

Section 2.- Declaration of Public Policy

It is the public policy of the Commonwealth of Puerto Rico to condemn any unauthorized distribution or publication of explicit material of an intimate nature for it constitutes an undue intrusion and a violation of the protection against abusive attacks on the honor, reputation and private or family life established in our Constitution.

This deplorable conduct affects a significant number of people and it is the duty of the State to provide the necessary tools to help prevent and eradicate it.

Section 3.- Definitions

For the purposes of this Act, the following terms shall have the meaning stated hereinbelow:

(a) “Electronic Communications”- Refers to email, written conversations, or conversations via applications (Apps), video calls, text messages (SMS), MMS messaging, instant messaging, wireless transmissions through IrDA, Bluetooth, Wi-Fi, social networks, webpages, or any other electronic means through which a party receives or sends information.

(b) “Explicit Material”- Any material of an intimate or sexual nature that includes any image of the human body or any part thereof; or that is sexually explicit and includes any type of sexual activity; whether intimate or of a couple, regardless of whether its is visual, illustrative, or graphic, or a video or audio recording.

(c) “Electronic or Digital Means of Communication”- It includes, but is not limited to, the following: IrDA, Bluetooth, Wi-Fi, mobile phones, computers, tablets, or any other device that can send electronic communications; as well as communication tools such as social media networks, text messages, chats, instant messaging, and webpages.

Section 4.- Criminal Conduct; Penalties

Any person who, without the victim’s authorization, purposely or knowingly violates the victim’s intimacy, distributes, discloses, reveals, or cedes to a third party or parties the victim’s explicit material, through any means of communication, including electronic communication, or through the use of electronic or digital means of communication, shall be guilty of a felony and punished by a fixed term of imprisonment of three (3) years. The term of imprisonment may be increased to five (5) years if there are any aggravating factors. The term of imprisonment may be decreased to one (1) year if there are any mitigating factors.

Any person who engages in the conduct described in the paragraph above to threaten, extort, or obtain any personal gain shall be guilty of a felony and punished by a fixed term of imprisonment of eight (8) years. Repeat offenders shall be required to register in the Registry of Persons Convicted of Sex Offenses and Child Abuse as a Tier I Sex Offender by order of the Court.

For the purposes of this Section, the fact that an individual sends or exchanges images, audio, videos, or any material through any means using any electronic device does not establish by itself that the individual lacked a reasonable expectation of privacy and intimacy. The provisions of this Section shall include any material that has been fabricated, modified, or altered for the same purposes.

Providers of an interactive computer service, information service, system, or access software providers that provide or enable computer access by multiple users

to a computer server, including a system that provides access to the Internet, are hereby exempt from this Section.

It is hereby provided that the criminal acts described in this Section shall prescribe after ten (10) years.

Section 5.- In any section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act were held to be unconstitutional by a court with competent jurisdiction; the holding to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the section, subsection, paragraph, subparagraph, clause, phrase, or part of this Act thus held to be unconstitutional.

Section 6.- This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 21-2021 (H. B. 547)** of the **1st Regular Session** of the **19th Legislative Assembly of Puerto Rico**:

AN ACT create the “Puerto Rico Act Against Revenge Porn,” in order to classify as an offense the distribution and publication of any explicit material of an intimate or sexual nature; establish penalties; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 28th day of January, 2022.

Mónica Freire-Florit, Esq.
Director