

To: Vincent Cardi, Chair, ULC Committee on Unauthorized Disclosure of Intimate Images
Louise Nadeau, Vice-Chair
From: Mary Anne Franks, Reporter
Re: Compilation of NCDII-Specific State Civil Laws (Excerpts)
Date: October 30, 2017

Please Note: This is a list of the NCDII-specific state civil statutes of which I am aware. It may not be comprehensive.

1. California

(a) A private cause of action lies against a person who **intentionally** distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (1) the person knew that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and **(3) the other person suffers general or special damages as described in Section 48a.**

(b) As used in this section, "intimate body part" means any portion of the genitals, and, in the case of a female, also includes any portion of the breast below the top of the areola, that is uncovered or visible through less than fully opaque clothing.

(c) There shall be no liability on the part of the person distributing material under subdivision (a) under any of the following circumstances:

(1) The distributed material was created under an agreement by the person appearing in the material for its public use and distribution or otherwise intended by that person for public use and distribution.

(2) The person possessing or viewing the distributed material has permission from the person appearing in the material to publish by any means or post the material on an Internet Web site.

(3) The person appearing in the material waived any reasonable expectation of privacy in the distributed material by making it accessible to the general public.

(4) The distributed material constitutes a matter of public concern.

(5) The distributed material was photographed, filmed, videotaped, recorded, or otherwise reproduced in a public place and under circumstances in which the person depicted had no reasonable expectation of privacy.

(6) The distributed material was previously distributed by another person.

(d) In addition to any other relief available at law, the court may order equitable relief against the person violating subdivision (a), including a temporary restraining order, or a preliminary injunction or a permanent injunction ordering the defendant to cease distribution of material. The court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym as provided in subdivision (f).

(e) The court may also grant, after holding a properly noticed hearing, reasonable attorney's fees and costs to the prevailing plaintiff.

(f) (1) A plaintiff in a civil proceeding pursuant to subdivision (a), may proceed using a pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff. A plaintiff who proceeds using a pseudonym and excluding or

redacting identifying characteristics as provided in this section shall file with the court and serve upon the defendant a confidential information form for this purpose that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(2) All court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation.

(3) As used in this subdivision, "identifying characteristics" includes, but is not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background.

(4) The responsibility for excluding or redacting the name or identifying characteristics of the plaintiff from all documents filed with the court rests solely with the parties and their attorneys. Nothing in this section requires the court to review pleadings or other papers for compliance with this provision.

(g) In an action pursuant to this section, the plaintiff shall state in the caption of the complaint "ACTION BASED ON CIVIL CODE SECTION 1708.85."

(h) Nothing in this section shall be construed to alter or negate any rights, obligations, or immunities of an interactive service provider under Section 230 of Title 47 of the United States Code. Nothing in this section shall be construed to limit or preclude a plaintiff from securing or recovering any other available remedy.

(i) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

2. Colorado

1)(a) An actor who is eighteen years of age or older commits the offense of posting a private image for pecuniary gain if he or she posts or distributes through social media or any website any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older:

(I) With the intent to obtain a pecuniary benefit from any person as a result of the posting, viewing, or removal of the private image; and

(II)(A) When the actor has not obtained the depicted person's consent; or

(B) When the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private.

...

(2) It shall not be an offense under this section if the photograph, video, or image is related to a newsworthy event.

(3) Nothing in this section precludes punishment under any section of law providing for greater punishment.

(4)(a) An individual whose private intimate parts have been posted in accordance with this section may bring a civil action against the person who caused the posting of the private images and is entitled to injunctive relief, the greater of ten thousand dollars or actual damages incurred as a result of the posting of the private images, exemplary damages, and reasonable attorney fees and costs.

- (b) An individual whose private intimate parts have been posted in accordance with this section shall retain a protectable right of authorship regarding the commercial use of the private image.
- (5) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service, as defined in [47 U.S.C. sec. 230\(f\)\(2\)](#), an information service, as defined in [47 U.S.C. sec. 153](#), or a telecommunications service, as defined in [47 U.S.C. sec. 153](#), for content provided by another person.
- (6) For purposes of this section, unless the context otherwise requires:
- (a) “Newsworthy event” means a matter of public interest, of public concern, or related to a public figure who is intimately involved in the resolution of important public questions or, by reason of his or her fame, shapes events in areas of concern to society.
- (b) “Private intimate parts” means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female.
- (c) “Social media” means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet website profiles.

3. Florida

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- (2) As used in this section, the term:
- (a) “Image” includes, but is not limited to, any photograph, picture, motion picture, film, video, or representation.
- (b) “Personal identification information” has the same meaning as provided in s. 817.568. 53
- (c) “Sexually cyberharass” means to publish a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.
- (d) “Sexually explicit image” means any image depicting nudity, as defined in s. 847.001, or depicting a person engaging in sexual conduct, as defined in s. 847.001. 62
- ...
- (5) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate relief in order to prevent or remedy a violation of this section, including the following:
- (a) Injunctive relief.
- (b) Monetary damages to include \$5,000 or actual damages incurred as a result of a violation of this section, whichever is greater.
- (c) Reasonable attorney fees and costs.
- (6) The criminal and civil penalties of this section do not apply to:
- (a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined in 47 U.S.C. s. 153, or communications service as defined in s. 90.202.11, that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or
- (b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.

(7) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within this state.

4. Minnesota

<https://www.revisor.mn.gov/statutes/?id=604.31>

604.31 CAUSE OF ACTION FOR NONCONSENSUAL DISSEMINATION OF PRIVATE SEXUAL IMAGES; SEXUAL SOLICITATION.

Subdivision 1. Nonconsensual dissemination of private sexual images.

(a) A cause of action against a person for the nonconsensual dissemination of private sexual images exists when:

- (1) a person disseminated an image without the consent of the person depicted in the image;
- (2) the image is of an individual depicted in a sexual act or whose intimate parts are exposed in whole or in part;

(3) the person is identifiable:

- (i) from the image itself, by the person depicted in the image or by another person; or
- (ii) from the personal information displayed in connection with the image; and

(4) the image was obtained or created under circumstances in which the person depicted had a reasonable expectation of privacy.

(b) The fact that the individual depicted in the image consented to the creation of the image or to the voluntary private transmission of the image is not a defense to liability for a person who has disseminated the image without consent.

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Subd. 3. Damages.

The court may award the following damages to a prevailing plaintiff from a person found liable under subdivision 1 or 2:

- (1) general and special damages, including all finance losses due to the dissemination of the image and damages for mental anguish;
- (2) an amount equal to any profit made from the dissemination of the image by the person who intentionally disclosed the image;
- (3) a civil penalty awarded to the plaintiff of an amount up to \$10,000; and
- (4) court costs, fees, and reasonable attorney fees.

Subd. 4. Injunction; temporary relief.

(a) A court may issue a temporary or permanent injunction or restraining order to prevent further harm to the plaintiff.

(b) The court may issue a civil fine for the violation of a court order in an amount up to \$1,000 per day for failure to comply with an order granted under this section.

Subd. 5. Confidentiality.

The court shall allow confidential filings to protect the privacy of the plaintiff in cases filed under this section.

Subd. 6. Liability; exceptions.

(a) No person shall be found liable under this section when:

(1) the dissemination is made for the purpose of a criminal investigation or prosecution that is otherwise lawful;

(2) the dissemination is for the purpose of, or in connection with, the reporting of unlawful conduct;

(3) the dissemination is made in the course of seeking or receiving medical or mental health treatment, and the image is protected from further dissemination;

(4) the image involves exposure in public or was obtained in a commercial setting for the purpose of the legal sale of goods or services, including the creation of artistic products for sale or display;

(5) the image relates to a matter of public interest and dissemination serves a lawful public purpose;

(6) the dissemination is for legitimate scientific research or educational purposes; or

(7) the dissemination is made for legal proceedings and is consistent with common practice in civil proceedings necessary for the proper functioning of the criminal justice system, or protected by court order which prohibits any further dissemination.

(b) This section does not alter or amend the liabilities and protections granted by United States Code, title 47, section 230, and shall be construed in a manner consistent with federal law.

(c) A cause of action arising under this section does not prevent the use of any other cause of action or remedy available under the law.

Subd. 7. Jurisdiction.

A court has jurisdiction over a cause of action filed pursuant to this section if the plaintiff or defendant resides in this state.

Subd. 8. Venue.

A cause of action arising under this section may be filed in either:

(1) the county of residence of the defendant or plaintiff or in the jurisdiction of the plaintiff's designated address if the plaintiff participates in the address confidentiality program established by chapter 5B; or

(2) the county where any image is produced, reproduced, or stored in violation of this section.

Subd. 9. Discovery of dissemination.

In a civil action brought under subdivision 1, the statute of limitations is tolled until the plaintiff discovers the image has been disseminated.

5. North Carolina

<https://law.justia.com/codes/north-carolina/2015/chapter-14/article-26/section-14-190.5a>

14-190.5A. Disclosure of private images.

(a) Definitions. - The following definitions apply in this section:

(1) Disclose. - Transfer, publish, distribute, or reproduce.

- (2) Image. - A photograph, film, videotape, recording, digital, or other reproduction.
- (3) Intimate parts. - Any of the following naked human parts: (i) male or female genitals, (ii) male or female pubic area, (iii) male or female anus, or (iv) the nipple of a female over the age of 12.
- (4) Personal relationship. - As defined in G.S. 50B-1(b).
- (5) Reasonable expectation of privacy. - When a depicted person has consented to the disclosure of an image within the context of a personal relationship and the depicted person reasonably believes that the disclosure will not go beyond that relationship.
- (6) Sexual conduct. - Includes any of the following:
- Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted.
 - Masturbation, excretory functions, or lewd exhibition of uncovered genitals.
 - An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.
- (b) Offense. - A person is guilty of disclosure of private images if all of the following apply:
- The person knowingly discloses an image of another person with the intent to do either of the following:
 - Coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
 - Cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
 - The depicted person is identifiable from the disclosed image itself or information offered in connection with the image.
 - The depicted person's intimate parts are exposed or the depicted person is engaged in sexual conduct in the disclosed image.
 - The person discloses the image without the affirmative consent of the depicted person.
 - The person discloses the image under circumstances such that the person knew or should have known that the depicted person had a reasonable expectation of privacy.
- ...
- (d) Exceptions. - This section does not apply to any of the following:
- Images involving voluntary exposure in public or commercial settings.
 - Disclosures made in the public interest, including, but not limited to, the reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, medical treatment, or scientific or educational activities.
 - Providers of an interactive computer service, as defined in 47 U.S.C. 230(f), for images provided by another person.
- (e) Destruction of Image. - In addition to any penalty or other damages, the court may award the destruction of any image made in violation of this section.
- (f) Other Sanctions or Remedies Not Precluded. - A violation of this section is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.
- (g) Civil Action. - In addition to any other remedies at law or in equity, including an order by the court to destroy any image disclosed in violation of this section, any person whose image is disclosed, or used, as described in subsection (b) of this section, has a civil cause of action against any person who discloses or uses the image and is entitled to recover from the other person any of the following:

(1) Actual damages, but not less than liquidated damages, to be computed at the rate of one thousand dollars (\$1,000) per day for each day of the violation or in the amount of ten thousand dollars (\$10,000), whichever is higher.

(2) Punitive damages.

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

The civil cause of action may be brought no more than one year after the initial discovery of the disclosure, but in no event may the action be commenced more than seven years from the most recent disclosure of the private image. (2015-250, s. 1.)

6. North Dakota

<http://codes.findlaw.com/nd/title-121-criminal-code/nd-cent-code-sect-12-1-17-07-2.html>

An individual whose intimate image is distributed in violation of section 12.1-17-07.2 may maintain a private right of action against each person who has distributed that image in violation of section 12.1-17-07.2, without regard to whether the defendant has been charged with, found guilty of, or pleaded guilty to that offense. An individual whose intimate image is distributed in violation of section 12.1-17-07.2 is entitled to pursue all of the economic, noneconomic, and exemplary or punitive damages and other remedies available by law and to obtain a temporary restraining order or a preliminary or permanent injunction ordering the person to cease distribution of the intimate image.

1. As used in this section:

a. "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.

b. "Hosting company" means a person that provides services or facilities for storing or distributing content over the internet without editorial or creative alteration of the content.

c. "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:

(1) Exposed human male or female genitals or pubic area, with less than an opaque covering;

(2) A female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(3) The individual engaged in any sexually explicit conduct.

d. "Service provider" means an internet service provider, including a person who leases or rents a wire or cable for the transmission of data.

e. "Sexually explicit conduct" means actual or simulated:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(2) Masturbation;

(3) Bestiality;

(4) Sadistic or masochistic activities;

(5) Exhibition of the genitals, pubic region, buttocks, or female breast of any individual;

(6) Visual depiction of nudity or partial nudity;

(7) Fondling or touching of the genitals, pubic region, buttocks, or female breast; or

- (8) Explicit representation of the defecation or urination functions.
- f. “Simulated sexually explicit conduct” means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.
2. A person commits the offense of distribution of intimate images if the person **knowingly or intentionally** distributes to any third party any intimate image of an individual eighteen years of age or older, if:
- The person **knows** that the depicted individual has not given consent to the person to distribute the intimate image;
 - The intimate image was created by or provided to the person under circumstances in which the individual has a reasonable expectation of privacy; and
 - Actual emotional distress or harm is caused to the individual as a result of the distribution under this section.**
3. This section does not apply to:
- Lawful practices of law enforcement agencies;
 - Prosecutorial agency functions;
 - The reporting of a criminal offense;
 - Court proceedings or any other judicial proceeding;
 - Lawful and generally accepted medical practices and procedures;
 - An intimate image if the individual portrayed in the image voluntarily allows public exposure of the image; or
 - An intimate image that is portrayed in a lawful commercial setting.
4. This section also does not apply to:
- An internet service provider or interactive computer service, as defined in [47 U.S.C. 230\(f\)\(2\)](#) ;**
 - A provider of an electronic communications service, as defined in [18 U.S.C. 2510](#) ;**
 - A telecommunications service, information service, or mobile service, as defined in [47 U.S.C. 153](#) , including a commercial mobile service, as defined in [47 U.S.C. 332\(d\)](#) ;
 - A cable operator, as defined in [47 U.S.C. 552](#) , if:
 - (1) The distribution of an intimate image by the cable operator occurs only incidentally through the operator's function of:
 - (a) Transmitting or routing data from one person to another person; or
 - (b) Providing a connection between one person and another person;
 - (2) The operator does not intentionally aid or abet in the distribution of the intimate image; and
 - (3) The operator does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the operator, as a specific condition for permitting the person to distribute the intimate image; or
 - A hosting company, if:
 - (1) The distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (2) The hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and
 - (3) The hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.

...

7. Pennsylvania

§ 3131. Unlawful dissemination of intimate image.

(a) Offense defined.--Except as provided in sections 5903 (relating to obscene and other sexual materials and performances), 6312 (relating to sexual abuse of children) and 6321 (relating to transmission of sexually explicit images by minor), a person commits the offense of unlawful dissemination of intimate image if, with intent to harass, annoy or alarm a current or former sexual or intimate partner, the person disseminates a visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.

(b) Defense.--It is a defense to a prosecution under this section that the actor disseminated the visual depiction with the consent of the person depicted.

....

(d) Territorial applicability.--A person may be convicted under the provisions of this section if the victim or the offender is located within this Commonwealth.

(e) Nonapplicability.--Nothing in this section shall be construed to apply to a law enforcement officer engaged in the performance of the law enforcement officer's official duties.

...

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection **unless the context clearly indicates otherwise:**

"Law enforcement officer." Any officer of the United States, of the Commonwealth or political subdivision thereof, or of another state or subdivision thereof, who is empowered to conduct investigations of or to make arrests for offenses enumerated in this title or an equivalent crime in another jurisdiction, and any attorney authorized by law to prosecute or participate in the prosecution of such offense.

"Minor." An individual under 18 years of age.

"Nudity." As defined in section 5903(e).

"Sexual conduct." As defined in section 5903(e).

"Visual depiction." As defined in section 6321.

2014 Amendment. Act 115 added section 3131.

Cross References. Section 3131 is referred to in section 8316.1 of Title 42 (Judiciary and Judicial Procedure).

(a) Cause of action established.--A person may bring a civil cause of action based upon unlawful dissemination of intimate image, as defined in [18 Pa.C.S. § 3131](#) (relating to unlawful dissemination of intimate image), in order to recover damages for any loss or injury sustained as a result of the violation.

(b) Parties authorized to bring action.--An action may be brought by a natural person or a guardian of the natural person, if the person is incompetent.

(c) Damages.--A court of competent jurisdiction may award damages as set forth in this subsection. In determining the extent of injury, the court shall consider that dissemination of an intimate image may cause long-term or permanent injury. The court may award:

(1) Actual damages arising from the incident or \$500, whichever is greater. Damages include loss of money, reputation or property, whether real or personal. The court may, in its discretion, award up to three times the actual damages sustained, but not less than \$500.

- (2) Reasonable attorney fees and court costs.
- (3) Additional relief the court deems necessary and proper.
- (d) Other remedies preserved.**--Nothing in this section shall be construed to limit the ability of a person to receive restitution under [18 Pa.C.S. § 1106](#) (relating to restitution for injuries to person or property).
- (e) Nonapplicability.**--The provisions of this section shall not be applicable to a law enforcement officer engaged in the law enforcement officer's official duties.
- (f) Definition.**--As used in this section, the term "law enforcement officer" means any officer of the United States, of the Commonwealth or political subdivision thereof, or of another state or subdivision thereof, who is empowered to conduct investigations of or to make arrests for offenses enumerated in 18 Pa.C.S. (relating to crimes and offenses), or an equivalent crime in another jurisdiction, and any attorney authorized by law to prosecute or participate in the prosecution of such offense.

8. Texas

<http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.98B.htm>

CHAPTER 98B. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL

Sec. 98B.001. DEFINITIONS. In this chapter:

- (1) "Intimate parts," "promote," "sexual conduct," and "visual material" have the meanings assigned by Section [21.16](#), Penal Code.
- (2) "Intimate visual material" means visual material that depicts a person:
 - (A) with the person's intimate parts exposed; or
 - (B) engaged in sexual conduct.

Sec. 98B.002. LIABILITY FOR UNLAWFUL DISCLOSURE OR PROMOTION OF CERTAIN INTIMATE VISUAL MATERIAL. (a) A defendant is liable, as provided by this chapter, to a person depicted in intimate visual material for damages arising from the disclosure of the material if:

- (1) the defendant discloses the intimate visual material without the **effective consent** of the depicted person;
 - (2) the intimate visual material was obtained by the defendant or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;
 - (3) the disclosure of the intimate visual material causes harm to the depicted person; and
 - (4) the disclosure of the intimate visual material reveals the identity of the depicted person in any manner, including through:
 - (A) any accompanying or subsequent information or material related to the intimate visual material; or
 - (B) information or material provided by a third party in response to the disclosure of the intimate visual material.
- (b) A defendant is liable, as provided by this chapter, to a person depicted in intimate visual material for damages arising from the promotion of the material if, knowing the character and content of the material, the defendant promotes intimate visual material described by Subsection

(a) on an Internet website or other forum for publication that is owned or operated by the defendant.

Sec. 98B.003. DAMAGES. (a) A claimant who prevails in a suit under this chapter shall be awarded:

- (1) actual damages, including damages for mental anguish;
- (2) court costs; and
- (3) reasonable attorney's fees.

(b) In addition to an award under Subsection (a), a claimant who prevails in a suit under this chapter may recover exemplary damages.

Sec. 98B.004. INJUNCTIVE RELIEF. (a) A court in which a suit is brought under this chapter, on the motion of a party, may issue a temporary restraining order or a temporary or permanent injunction to restrain and prevent the disclosure or promotion of intimate visual material with respect to the person depicted in the material.

(b) A court that issues a temporary restraining order or a temporary or permanent injunction under Subsection (a) may award to the party who brought the motion damages in the amount of:

- (1) \$1,000 for each violation of the court's order or injunction, if the disclosure or promotion of intimate visual material is wilful or intentional; or
- (2) \$500 for each violation of the court's order or injunction, if the disclosure or promotion of intimate visual material is not wilful or intentional.

Sec. 98B.005. CAUSE OF ACTION CUMULATIVE. The cause of action created by this chapter is cumulative of any other remedy provided by common law or statute.

Sec. 98B.006. JURISDICTION. A court has personal jurisdiction over a defendant in a suit brought under this chapter if:

- (1) the defendant resides in this state;
- (2) the claimant who is depicted in the intimate visual material resides in this state;
- (3) the intimate visual material is stored on a server that is located in this state; or
- (4) the intimate visual material is available for view in this state.

Sec. 98B.007. LIBERAL CONSTRUCTION AND APPLICATION; CERTAIN CONDUCT EXCEPTED. (a) This chapter shall be liberally construed and applied to promote its underlying purpose to protect persons from, and provide adequate remedies to victims of, the disclosure or promotion of intimate visual material.

(b) This chapter does not apply to a claim brought against an interactive computer service, as defined by 47 U.S.C. Section 230, for a disclosure or promotion consisting of intimate visual material provided by another person.

9. Vermont

<http://legislature.vermont.gov/statutes/section/13/059/02606>

§ 2606. Disclosure of sexually explicit images without consent

(a) As used in this section:

- (1) "Disclose" includes transfer, publish, distribute, exhibit, or reproduce.
- (2) "Harm" means physical injury, financial injury, or serious emotional distress.
- (3) "Nude" means any one or more of the following uncovered parts of the human body:
 - (A) genitals;
 - (B) pubic area;
 - (C) anus; or
 - (D) post-pubescent female nipple.
- (4) "Sexual conduct" shall have the same meaning as in section 2821 of this title.
- (5) "Visual image" includes a photograph, film, videotape, recording, or digital reproduction.
- (b)(1) A person violates this section if he or she knowingly discloses a visual image of an identifiable person who is nude or who is engaged in sexual conduct, without his or her consent, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted, and the disclosure would cause a reasonable person to suffer harm. A person may be identifiable from the image itself or information offered in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. A person who violates this subdivision (1) shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.
- (2) A person who violates subdivision (1) of this subsection with the intent of disclosing the image for financial profit shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.
- (c) A person who maintains an Internet website, online service, online application, or mobile application that contains a visual image of an identifiable person who is nude or who is engaged in sexual conduct shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disclosing the visual image if requested by the depicted person.
- (d) This section shall not apply to:
 - (1) Images involving voluntary nudity or sexual conduct in public or commercial settings or in a place where a person does not have a reasonable expectation of privacy.
 - (2) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment.
 - (3) Disclosures of materials that constitute a matter of public concern.
- (4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or information services or telecommunications services, as defined in 47 U.S.C. § 153, for content solely provided by another person. This subdivision shall not preclude other remedies available at law.
- (e)(1) A plaintiff shall have a private cause of action against a defendant who knowingly discloses, without the plaintiff's consent, an identifiable visual image of the plaintiff while he or she is nude or engaged in sexual conduct and the disclosure causes the plaintiff harm.
- (2) In addition to any other relief available at law, the Court may order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the image. The Court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym. (Added 2015, No. 62, § 2.)

10. Washington

<http://app.leg.wa.gov/RCW/default.aspx?cite=4.24.795>

RCW 4.24.795

Distribution of intimate images—Liability for damages, other civil penalties—Confidentiality of the plaintiff.

(1) A person distributes an intimate image of another person when that person **intentionally** and without consent distributes, transmits, or otherwise makes available an intimate image or images of that other person that was:

- (a) Obtained under circumstances in which a reasonable person would know or understand that the image was to remain private; or
- (b) Knowingly obtained by that person without authorization or by exceeding authorized access from the other person's property, accounts, messages, files, or resources.

(2) Any person who distributes an intimate image of another person as described in subsection (1) of this section and at the time of such distribution knows or reasonably should know that disclosure would cause harm to the depicted person shall be liable to that other person for actual damages including, but not limited to, pain and suffering, emotional distress, economic damages, and lost earnings, reasonable attorneys' fees, and costs. The court may also, in its discretion, award injunctive relief as it deems necessary.

(3) Factors that may be used to determine whether a reasonable person would know or understand that the image was to remain private include:

- (a) The nature of the relationship between the parties;
- (b) The circumstances under which the intimate image was taken;
- (c) The circumstances under which the intimate image was distributed; and
- (d) Any other relevant factors.

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

(5) As used in this section, "intimate image" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts:

(a) Sexual activity, including sexual intercourse as defined in [RCW 9A.44.010](#) and masturbation; or

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

(6) In an action brought under this section, the court shall:

(a) **Make it known to the plaintiff as early as possible in the proceedings of the action that the plaintiff may use a confidential identity in relation to the action;**

(b) Allow a plaintiff to use a confidential identity in all petitions, filings, and other documents presented to the court;

(c) Use the confidential identity in all of the court's proceedings and records relating to the action, including any appellate proceedings; and

(d) Maintain the records relating to the action in a manner that protects the confidentiality of the plaintiff.

(7) Nothing in this section shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. 230(f)(2) as it exists on September 26, 2015, for content provided by another person.

11. Wisconsin

<https://docs.legis.wisconsin.gov/statutes/statutes/995/50>

995.50 Right of privacy.

(1) The right of privacy is recognized in this state. One whose privacy is unreasonably invaded is entitled to the following relief:

(a) Equitable relief to prevent and restrain such invasion, excluding prior restraint against constitutionally protected communication privately and through the public media;

(b) Compensatory damages based either on plaintiff's loss or defendant's unjust enrichment; and

(c) A reasonable amount for attorney fees.

(2) In this section, "invasion of privacy" means any of the following:

(a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.

(b) The use, for advertising purposes or for purposes of trade, of the name, portrait or picture of any living person, without having first obtained the written consent of the person or, if the person is a minor, of his or her parent or guardian.

(c) Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed. It is not an invasion of privacy to communicate any information available to the public as a matter of public record.

(d) Conduct that is prohibited under s. [942.09](#), regardless of whether there has been a criminal action related to the conduct, and regardless of the outcome of the criminal action, if there has been a criminal action related to the conduct.

(3) The right of privacy recognized in this section shall be interpreted in accordance with the developing common law of privacy, including defenses of absolute and qualified privilege, with due regard for maintaining freedom of communication, privately and through the public media.

(4) Compensatory damages are not limited to damages for pecuniary loss, but shall not be presumed in the absence of proof.

(6)

(a) If judgment is entered in favor of the defendant in an action for invasion of privacy, the court shall determine if the action was frivolous. If the court determines that the action was frivolous, it shall award the defendant reasonable fees and costs relating to the defense of the action.

(b) In order to find an action for invasion of privacy to be frivolous under par. (a), the court must find either of the following:

1. The action was commenced in bad faith or for harassment purposes.

2. The action was devoid of arguable basis in law or equity.

(7) No action for invasion of privacy may be maintained under this section if the claim is based on an act which is permissible under ss. [196.63](#) or [968.27](#) to [968.373](#).

942.09 Representations depicting nudity.

(1) In this section:

(a) "Captures a representation" means takes a photograph, makes a motion picture, videotape, recording, or other visual or audio representation, or records or stores in any medium data that represents a visual image.

(ae) "Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to the act. A person who has not attained the age of 18 is incapable of consent. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. [972.11 \(2\)](#):

1. A person suffering from a mental illness or defect that impairs capacity to appraise personal conduct.

2. A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(ag) "Intimate representation" means any of the following:

1. A representation of a nude or partially nude person.

2. A representation of clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public.

3. A representation of a person urinating, defecating, or using a feminine hygiene product.

4. A representation of person engaged in sexual intercourse or sexual contact, as defined in s. [940.225 \(5\) \(b\)](#) or [\(c\)](#).

(am) "Nude or partially nude person" has the meaning given in s. [942.08 \(1\) \(a\)](#).

(b) "Nudity" has the meaning given in s. [948.11 \(1\) \(d\)](#).

(bg) "Post or publish" includes posting or publishing on a Web site on the Internet, if the Web site may be viewed by the general public.

(bn) "Private representation" means a representation depicting a nude or partially nude person or depicting a person engaging in sexually explicit conduct that is intended by the person depicted in the representation to be captured, viewed, or possessed only by the person who, with the consent of the person depicted, captured the representation or to whom the person depicted directly and intentionally gave possession of the representation.

(c) "Representation" means a photograph, exposed film, motion picture, videotape, recording, other visual or audio representation, or data that represents a visual image or audio recording.

(d) "Sexually explicit conduct" has the meaning given in s. [948.01 \(7\)](#).

(2)

(am) Except as provided in par. [\(dr\)](#), whoever does any of the following is guilty of a Class I felony:

....

1. Captures an intimate representation without the consent of the person depicted under circumstances in which he or she has a reasonable expectation of privacy, if the person knows or has reason to know that the person who is depicted does not consent to the capture of the intimate representation.

2. Makes a reproduction of an intimate representation that the person knows or has reason to know was captured in violation of subd. [1.](#) and that depicts an intimate representation captured in violation of subd. [1.](#), if the person depicted in the reproduction did not consent to the making of the reproduction.

3. Possesses, distributes, or exhibits an intimate representation that was captured in violation of subd. [1.](#) or a reproduction made in violation of subd. [2.](#), if the person knows or has reason to

know that the intimate representation was captured in violation of subd. [1.](#) or the reproduction was made in violation of subd. [2.](#), and if the person who is depicted in the intimate representation or reproduction did not consent to the possession, distribution, or exhibition.

(bm)

1m. Notwithstanding par. [\(am\)](#), if the person depicted in an intimate representation or reproduction is a child, a parent, guardian, or legal custodian of the child may do any of the following:

....

a. Capture and possess the representation or make and possess the reproduction depicting the child.

b. Distribute or exhibit a representation captured or possessed under subd. [1m. a.](#), or distribute or exhibit a reproduction made or possessed under subd. [1m. a.](#)

2m. Subdivision [1m.](#) does not apply to a parent, guardian, or legal custodian of a child who captures, possesses, makes, distributes, or exhibits a representation depicting the child in violation of s. [948.05](#) or [948.12](#) or for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.

(cm) Paragraph [\(am\)](#) does not apply to a person who receives a representation or reproduction depicting a child from a parent, guardian, or legal custodian of the child under par. [\(bm\) 1m. b.](#), if the possession, exhibition, or distribution is not for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.

(dm) This subsection does not apply to a provider of an interactive computer service, as defined in [47 USC 230](#) (f) (2), or to an information service or telecommunications service, as defined in [47 USC 153](#), if the intimate representation or reproduction is provided to the interactive computer service, information service, or telecommunications service by a 3rd party, or to a person who posts or publishes a private representation that is newsworthy or of public importance.

(dr) Except as provided in par. [\(bm\)](#), a person who commits a violation specified under par. [\(am\)](#) is guilty of a Class H felony if the person depicted in violation of par. [\(am\)](#) had not, at the time of the violation, attained the age of 18 years.

....

(a) Except as provided in par. [\(am\)](#), whoever does any of the following is guilty of a Class A misdemeanor:

1. Posts, publishes, or causes to be posted or published, a private representation if the actor knows that the person depicted does not consent to the posting or publication of the private representation.

2. Posts, publishes, or causes to be posted or published, a depiction of a person that he or she knows is a private representation, without the consent of the person depicted.

(am) A person who commits a violation specified under par. [\(a\)](#) is guilty of a Class I felony if the person depicted or represented in the violation of par. [\(a\)](#) had not, at the time of the violation, attained the age of 18 years.

(b) This subsection does not apply to any of the following:

1. The parent, guardian, or legal custodian of the person depicted if the private representation does not violate s. [948.05](#) or [948.12](#) and the posting or publication is not for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.

2. A law enforcement officer or agent acting in his or her official capacity in connection with the investigation or prosecution of a crime.

3. A person who posts or publishes a private representation that is newsworthy or of public importance.

4. A provider of an interactive computer service, as defined in 47 USC 230 (f) (2), or to an information service or telecommunications service, as defined in 47 USC 153, if the private representation is provided to the interactive computer service, information service, or telecommunications service by a 3rd party.

(5)

(a) Except as provided in par. (am), whoever, while present in a locker room, intentionally captures a representation of a nude or partially nude person while the person is nude or partially nude in the locker room is guilty of a Class A misdemeanor. This paragraph does not apply if the person consents to the capture of the representation and one of the following applies:

1. The person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent.

2. The person's parent, guardian, or legal custodian consents to the capture of the representation.

(am) A person who commits a violation specified under par. (a) is guilty of a Class I felony if the person represented in violation of par. (a) had not, at the time of the violation, attained the age of 18 years.

(b)

1. Except as provided in par. (bn), whoever intentionally does any of the following is guilty of a Class I felony:

a. Captures a representation of a nude or partially nude person while the actor is present in, and the person is nude or partially nude in, the locker room and exhibits or distributes the representation to another.

b. Transmits or broadcasts an image of a nude or partially nude person from a locker room while the person is nude or partially nude in the locker room.

2. This paragraph does not apply if the person consents to the exhibition or distribution of the representation or the transmission or broadcast of the image and one of the following applies:

a. The person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent.

b. The person's parent, guardian, or legal custodian consents to the exhibition, distribution, transmission, or broadcast.

(bn) A person who commits a violation specified under par. (b) is guilty of a Class H felony if the person represented in violation of par. (a) had not, at the time of the violation, attained the age of 18 years.

....

A "legitimate expectation of privacy" for purposes of a search or seizure under the 4th amendment is not consistent with the context and purpose of this section. The 4th amendment embodies a balance between society's interest in law enforcement and the privacy interest asserted by the individual that is not relevant to this section.