

Massachusetts Judiciary Committee Advances Revenge Porn Bill

After lawmakers failed to push a bill to punish “revenge porn” over the finish line last year, a new bill favorably reported out of the Judiciary Committee on Tuesday seeks to crack down on distribution of sexually explicit content without the subject’s consent.

Disseminating nude photos of another person without permission would be considered criminal harassment under the legislation, and offenders could face up to two and a half years in prison or a fine of \$10,000.

The committee-formed legislation combines aspects of a number of bills that were before Sen. Jamie Eldridge and Rep. Michael Day’s committee, and was passed along to the House Ways and Means Committee with their stamp of approval.

The bill meant to “prevent abuse and exploitation” (H 4115) also deals with sexting, coercive control and criminal harassment.

It would increase the fine for “willfully and maliciously” engaging in a “knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person” from \$1,000 to \$5,000.

And distributing sexually explicit material of another person without their consent, when doing so is meant to harass, harm or threaten the person and causes them mental or physical harm (so-called “revenge porn”), could be punished with imprisonment in a house of correction for up to two and a half years or a fine of \$10,000.

On a second offense, the punishment can go up to 10 years in state prison or a fine of \$15,000.

The Judiciary Committee bill also makes clear that “a person’s consent to the creation of visual material shall not constitute consent to the distribution of the visual material.”

Survivors and victims’ rights advocates warn that revenge porn has grown increasingly common in the digital age, subjecting people – particularly women – to social and emotional harm often inflicted by former romantic partners.

Lawmakers tried to crack down on revenge porn last year, but senators didn’t leave themselves enough time in the end-of-session push to close a loophole in state law that makes prosecution of revenge porn cases nearly impossible. Part of the problem, reform advocates say, is a 2005 Supreme Judicial Court ruling that made it difficult for prosecutors to pursue charges unless three or more incidents took place.

Supporters said during last year’s debate that 48 other states have clear laws on the books banning revenge porn, but not Massachusetts.

The legislation was a priority for former Gov. Charlie Baker and Lt. Gov. Karyn Polito, who pressed lawmakers for several years to pass legislation to punish the nonconsensual spread of someone else’s nude photos or videos.

“We’re one of only two states in the country in which it’s not a crime to make publicly available on the internet pictures that you take of somebody when you had their permission to do so,” Baker said during a GBH News radio interview last year. “If you’ve ever heard women talk about what this does to them, you’d understand why it’s a crime in 48 states and you would not understand why it’s not a crime in Massachusetts.”

The House unanimously passed a similar teen sexting and

revenge porn bill in May of 2022, but senators didn't take it up until the last days of December. With only about a week to get the legislation through their chamber, the bill died at the early January end of session without action taken on it.

In addition to addressing revenge porn, the bill would require the attorney general, Department of Elementary and Secondary Education, Department of Youth Services and the state's district attorneys to develop an "educational diversion program" to warn minors of the legal consequences of "sexting," or sending nude photos and sexually explicit content over text.

This program would be given to school districts to use in educational materials on the topic.

The curriculum would also seek to show young people the non-legal consequences of sexting: "the effect on relationships, loss of educational and employment opportunities, and removal, exclusion or expulsion from school programs and extracurricular activities... how the unique characteristics of the internet can produce long-term and unforeseen consequences for sexting and posting sexual images online, including the impact on health relationships and risk of trafficking... and the connection between bullying and cyber-bullying, sexual assault and dating violence and juveniles sexting or posting sexual images."

Minors who break the law, by distributing nude photos of someone else without their consent, could be punished by a commitment to the Department of Youth Services, under the new bill. They would not, however, have to register as a sex offender.

The legislation also adds "coercive control" to the definition of "abuse" in state law – which includes non-physical forms of abuse by family or household members, such as financial, technological and emotional abuse.

It would also extend the statute of limitations for assault and battery on a family or household member, or against someone with an active protective order against the perpetrator, from six years to 15 years.