

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACT

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT, LAW AND ORDER, NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ENACTING THE REVENGE PORN ACT AND AMENDING TITLE 17 SEX OFFENSES

BE IT ENACTED:

SECTION ONE: AUTHORITY

- A. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council and is empowered to review and recommend resolutions relating to social services, health, environmental health, education, veterans and veterans services, employment and labor. 2 N.N.C §§ 164(A)(1), 400(A) and 401(B)(6)(a) (2012); CO-45-12
- B. The Resources and Development Committee is a standing committee of the Navajo Nation Council and is empowered to review and make recommendations to the Navajo Nation Council for final approval resolutions requiring Navajo Nation Council approval to accomplish or impact the committee purposes. 2 N.N.C. §§ 164(A)(1), 500(A) and 501(B)(4)(f) (2012); CO-45-12.
- C. The Law and Order Committee is a standing committee of the Navajo Nation Council and is empowered with the authority to review and make recommendations to the Navajo Nation Council on amendments to and enactments in the Navajo Nation Code. 2 N.N.C §§ 164(A)(1), 600(A), and 601(B)(14) (2012); CO-45-12.
- D. The Naabik'iyati' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 164(A)(9), reviews proposed legislation, which requires final action by the Navajo Nation Council. CO-45-12
- E. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C § 164(A) (2012); CO-45-12.

SECTION TWO: FINDINGS

- A. The Navajo Nation is responsible for the enforcement of the Criminal Code, including amendments, as may be enacted by the Navajo Nation through its Council and the President.
- B. The purpose of the Navajo Nation Criminal Code, being applied in harmony with the other Titles of the Navajo Nation Code and policies of the Navajo Nation, include, among others, proscribing certain conduct that unjustifiably and inexcusably threatens or inflicts substantial harm to individual or public interests, giving all persons entering into the territorial jurisdiction of the Navajo Nation Courts a fair warning of such proscribed conduct, differentiating other conduct from that proscribed by the Criminal Code on reasonable grounds, and protecting and promoting the interests of the Navajo Nation, its public, and its economy and economic development within its territorial jurisdiction.
- C. The Navajo Nation's laws and policies are intended to improve the Navajo Nation economy and promote economic development within the Navajo Nation to increase economic opportunity, improve the standards of living within the Navajo Nation, and promote the health and welfare of those within the Navajo Nation.
- D. Currently thirty-eight states and the District of Columbia have revenge porn laws.
- E. Revenge Porn is defined as, "sexually explicit images of a person posted online without that person's consent especially as a form of revenge or harassment." *Revenge Porn*, Merriam-Webster Dictionary (2017).
- F. It is within the best interest of the Navajo Nation to enact the Revenge Porn Act and amend Title 17 of the Navajo Nation Code relating to sexual offenses.

SECTION THREE. AMENDMENT TO TITLE 17

The Navajo Nation amends the Title 17 as follows:

NAVAJO NATION CODE
TITLE 17. LAW AND ORDER
CHAPTER 3. OFFENSES
SUBCHAPTER 15. SEX OFFENSES

§ 435 433. Definitions

- A. "Disclose" means display, distribute, publish, advertise or offer, or otherwise make available to another person.
- B. "Disclosed electronically" means delivery to an electronic-mail address, mobile device, tablet or other electronic communication device and includes disclosure on the internet.
- C. "Display publicly" means exposing, placing, posting exhibiting or in any fashion displaying an item in such a manner that it may be seen by normal vision from or within a public location.
- ED. "Electronic communication device" means a computer, video, recorder, digital camera, fax machine, telephone, wireless mobile telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.
- DE. "Furnishes" means to sell, give, rent, loan or otherwise provide.
- F. "Harm" means physical injury, financial injury, or serious emotional distress.
- G. "Image" means a photograph, videotape, film or digital recording.
- F.H. "Minor" means a person under eighteen (18) years of age.
- I. "Nude", "Nudity" or "state of nudity" means any of the following:
1. The appearance of a human anus, genitals or a female breast below a point immediately above the top of the areola.

2. A state of dress that fails to opaquely cover a human anus, genitals or a female breast below a point immediately above the top of the areola.

GJ. "Prostitution" means, for purposes of this Subchapter, when a person uses a minor to engage in a sexual act or sexual contact with another for monetary or personal gain of the person so using the minor.

K. "Reasonable expectation of privacy" means the person exhibits an actual expectation of privacy and the expectation is reasonable.

HL. "Sadomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing apparel or shackled or bound or physically restrained.

BM. "Sexual act" means:

1. Contact and penetration, however slight, between the penis and the vulva or anus as in sexual intercourse; or
2. Contact between the mouth and penis or vulva or anus; or
3. Using a hand, finger or any object to penetrate, however slight, the anal or vaginal opening of another.

AN. "Sexual contact" means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast.

O. "Specific sexual activities" means any of the following:

1. Human genitals in a state of sexual stimulation or arousal.
2. Sex acts, normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation or sodomy.
3. Fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breast.

IP. "Spouse" means a person who is recognized as the husband or wife of another person pursuant to 9 N.N.C. § 1.

JQ. "Without consent" means:

1. The victim is coerced by the immediate use or threatened use of force against a person or property; or
2. The victim is incompetent to consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition unless at the time the defendant engaged in the conduct constituting the offense he or she did not know and could not reasonably have known of the facts or conditions responsible for such incompetency to consent; or
3. The victim is intentionally deceived as to the nature of the act; or
4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.
5. The victim is a minor.

§ ~~436~~ 434. Solicitation of a minor for prostitution

§ ~~437~~ 435. Solicitation involving a minor in sexual contact or a sexual act

§ ~~438~~ 436. Conspiracy to coerce a minor to engage in sexual contact

§ ~~439~~ 437. Kidnapping with intent to commit sexual contact or a sexual act

§ ~~440~~ 438. Furnishing sexual materials to minors

§ ~~441~~ 439. Displaying sexual materials to minors as part of a person's business

§ ~~442~~ 440. Public sexual indecency

§ ~~443~~ 441. Sexual assault

§ ~~443A~~ 441A. Aggravated sexual assault

§ ~~444~~ 442. Seduction

§ ~~445~~ 443. Sexual exploitation of a minor through electronic communication device

§ ~~446~~ 444. Luring a minor by electronic communication device

§~~447~~ 445. Possession of child pornography

§ ~~448~~ 446. Incest.

§ ~~449~~ 447. Sexual contact or sexual act with a foster child or stepchild

§ 448. Unlawful distribution of sexual images depicting states of nudity or specific sexual activities

A. Offense. It is unlawful for a person to intentionally disclose a sexual image of another person who is identifiable from the image itself or from information displayed in connection with the image if all of the following apply:

1. The person in the image is depicted in a state of nudity or is engaged in specific sexual activities;
2. The depicted person has a reasonable expectation of privacy, evidence that a person has sent an image to another person using electronic device does not, on its own, remove the person's reasonable expectation of privacy for that image; and
3. The sexual image is disclosed with the intent to harm, harass, intimidate, threaten or coerce the depicted person.

B. Exceptions. Section 448(A)(1-3) does not apply to any of the following:

1. Reporting to law enforcement the unlawful conduct of Section 448(A)(1-3) of another person.
2. Lawful and common practices of law enforcement: criminal reporting, legal proceedings or medical treatment.
3. Images involving voluntary exposure in a public or commercial setting.
4. This is not a tier 1 sex offense and registration as a sex offender is not required pursuant to the Sex Offender Registration and Notification Act, 17 N.N.C. §§ 2103 and 2105.

C. Sentence.

1. Any person found guilty of unlawful distribution of sexual images may be sentenced to imprisonment for a term not to exceed three hundred sixty five (365) days, ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both. If a person is

found guilty, the court shall order the removal of the unlawfully distributed sexual images.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and may order restitution or nályééh shall be paid to the victim(s).
3. The trial court may utilize the services of the Navajo Peacemaking Program to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
4. The trial court may impose a peace or security bond upon the defendant, including the pledges of family or clan sureties.
5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the surety of the consequences of breach of the bond or pledge.
6. The trial court may impose community service sentences, to be served under the supervision of an organization or an individual designated by the court.

SECTION FOUR. CODIFICATION

The provisions of the Act which amend or adopt new sections of the Navajo Nations Code shall be codified by the Office Of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

SECTION FIVE. SAVINGS CLAUSE

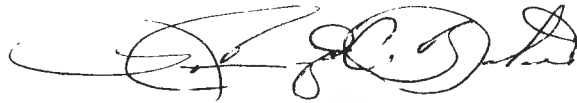
Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

SECTION SIX. EFFECTIVE DATE

Amendments enacted herein shall be effective pursuant to 2 N.N.C § 221(B).

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 17 in favor and 00 opposed, on this 19th day of April 2018.



LoRenzo C. Bates, Speaker
23rd Navajo Nation Council

4-27-18


Date

Motion: Honorable Edmund Yazzie
Second: Honorable Leonard Pete

Speaker Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(10), on this 7th day of May 2018.



Russell Begaye, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this _____ day of _____ 2018 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

NAVAJO NATION

RCS# 1095

4/19/2018

Spring Session

01:06:33 PM

Amd# to Amd#

Legislation 0428-17:

PASSED

MOT Yazzie

Enacting the Revenge Porn Act

SEC Pete

and Amending Title 17 Sex
Offenses

Yea : 17

Nay : 0

Excused : 2

Not Voting : 5

Yea : 17

Begay, K

Damon

Perry

Smith

Begay, S

Daniels

Pete

Tso

Bennett

Hale

Phelps

Witherspoon

Chee

Jack

Slim

Yazzie

Crotty

Nay : 0

Excused : 2

Filfred

Shepherd

Not Voting : 5

Bates

BeGaye, N

Brown

Tsosie

Begay, NM