

Chapter 9A.86 RCW
DISCLOSING INTIMATE IMAGES

Sections

- 9A.86.010 Disclosing intimate images.
- 9A.86.020 Intimate images—Forfeiture by minors.
- 9A.86.030 Disclosing fabricated intimate images.

RCW 9A.86.010 Disclosing intimate images. (1) A person commits the crime of disclosing intimate images when the person knowingly discloses an intimate image of another person and the person disclosing the image:

(a) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private;

(b) Knows or should have known that the depicted person has not consented to the disclosure; and

(c) Knows or reasonably should know that disclosure would cause harm to the depicted person.

(2) A person who is under the age of eighteen is not guilty of the crime of disclosing intimate images unless the person:

(a) Intentionally and maliciously disclosed an intimate image of another person;

(b) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private; and

(c) Knows or should have known that the depicted person has not consented to the disclosure.

(3) This section does not apply to:

(a) Images involving voluntary exposure in public or commercial settings; or

(b) 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, or medical treatment.

(4) This section does not impose liability upon the following entities solely as a result of content provided by another person:

(a) An interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2);

(b) A mobile telecommunications service provider, as defined in RCW 82.04.065; or

(c) A telecommunications network or broadband provider.

(5) 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.

(6) For purposes of this section:

(a) "Disclosing" includes transferring, publishing, or disseminating, as well as making a digital depiction available for distribution or downloading through the facilities of a telecommunications network or through any other means of transferring computer programs or data to a computer;

(b) "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:

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

(ii) 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.

(7) The crime of disclosing intimate images:

(a) Is a gross misdemeanor on the first offense; or

(b) Is a class C felony if the defendant has one or more prior convictions for a violation of this section or RCW 9A.86.030.

(8) Nothing in this section is construed to:

(a) Alter or negate any rights, obligations, or immunities of an interactive service provider under 47 U.S.C. Sec. 230; or

(b) Limit or preclude a plaintiff from securing or recovering any other available remedy. [2024 c 88 s 8; 2016 c 91 s 1; 2015 2nd sp.s. c 7 s 1.]

RCW 9A.86.020 Intimate images—Forfeiture by minors. A minor who possesses any image of any other minor which constitutes an intimate image as defined in RCW 9A.86.010 or a fabricated intimate image as defined in RCW 9A.86.030 forfeits any right to continued possession of the image and any court exercising jurisdiction over such image shall order forfeiture of the image. [2024 c 88 s 9; 2019 c 128 s 10.]

Short title—2019 c 128: See note following RCW 13.40.660.

RCW 9A.86.030 Disclosing fabricated intimate images. (1) A person commits the crime of disclosing fabricated intimate images when the person knowingly discloses a fabricated intimate image of another person and the person disclosing the image:

(a) Knows or should have known that the depicted person has not consented to the disclosure; and

(b) Knows or reasonably should know that disclosure would cause harm to the depicted person.

(2) A person who is under the age of 18 is not guilty of the crime of disclosing fabricated intimate images unless the person:

(a) Intentionally and maliciously disclosed a fabricated intimate image of another person; and

(b) Knows or should have known that the depicted person has not consented to the disclosure.

(3) This section does not apply to:

(a) 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, or medical treatment; or

(b) Images that constitute commentary, criticism, or disclosure protected by the Washington state Constitution or the United States Constitution.

(4) This section does not impose liability upon the following entities solely as a result of content provided by another person:

(a) An interactive computer service, as defined in Title 47 U.S.C. Sec. 230(f)(2);

(b) A mobile telecommunications service provider, as defined in RCW 82.04.065; or

(c) A telecommunications network or broadband provider.

(5) In any prosecution for a violation of this section, it is not a defense that:

(a) The perpetrator lacked knowledge of whether the disclosed image had been created or altered by digitization; or

(b) The depicted person consented to the creation or alteration of the image.

(6) For purposes of this section:

(a) "Digitization" means creating or altering an image of a person in a realistic manner utilizing images of another person or computer-generated images, regardless of whether such creation or alteration is accomplished manually or through an automated process. "Digitization" includes, but is not limited to, creation or alteration of an image by using artificial intelligence.

(b) "Disclosing" includes transferring, publishing, or disseminating, as well as making a digital depiction available for distribution or downloading through the facilities of a telecommunications network or through any other means of transferring computer programs or data to a computer.

(c) "Fabricated 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 created or altered by digitization to depict:

(i) Computer-generated intimate body parts or the intimate body parts of another person as the intimate body parts of the depicted person, whether nude or visible through less than opaque clothing and including the genitals, pubic area, anus, or postpubescent female nipple; or

(ii) The depicted person engaging in sexual activity, including masturbation, sexual contact, or sexual intercourse, as those terms are defined in RCW 9A.44.010, in which the depicted person did not actually engage.

(7) The crime of disclosing fabricated intimate images:

(a) Is a gross misdemeanor on the first offense; or

(b) Is a class C felony if the defendant has one or more prior convictions for a violation of this section or RCW 9A.86.010.

(8) Nothing in this section is construed to:

(a) Alter or negate any rights, obligations, or immunities of an interactive service provider under Title 47 U.S.C. Sec. 230; or

(b) Limit or preclude a plaintiff from securing or recovering any other available remedy. [2024 c 88 s 7.]