



Vermont Legislative Research Service

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Issues Surrounding the Porn Industry: “Revenge Porn,” Nonconsensual Pornography, Restorative Justice, and Taxation on the Internet Porn Industry

Revenge porn is defined as a type of online harassment that occurs when an ex-partner or a hacker posts sexually explicit images of a person online without their permission.¹ Many people use this definition interchangeably with non-consensual pornography, but they are slightly different. Laws on revenge porn factor in the intent involved in posting someone else's sexually explicit images (for revenge and/or harassment). Revenge porn can include images taken during an intimate relationship, recordings, images stolen from devices, or recordings of sexual assault.² In addition, with growing usage of artificial intelligence (AI), images and video can be altered to change the person or the action involved in revenge porn. This is called “deepfake porn.”

Existing State Policy on Revenge Pornography and Nonconsensual Pornography

Vermont

Vermont currently has laws prohibiting “revenge porn. Inontor coerce the person depicted, and the disclosure would be a criminal conduct.”

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¹ Find Law, Thomas Reuters, “State Revenge Porn Laws,” accessed November 2, 2023, <https://www.findlaw.com/criminal/criminal-charges/revenge-porn-laws-by-state.html>.

² Legal Voice, “Know Your Rights: Non-Consensual Pornography (“Revenge Porn”),” August 2022, accessed October 25, 2023, <https://legalvoice.org/nonconsensual-pornography/>.

³ State of Vermont, Disclosure of sexually explicit images without consent, 13 V.S.A. § 2606 (2020), <https://legislature.vermont.gov/statutes/section/13/059/02606>

⁴ State of Vermont, 13 V.S.A. § 2606.

⁵ State of Vermont, 13 V.S.A. § 2606.

The Vermont Supreme Court reviewed the state’s revenge porn law in 2016. In this case, a woman had sent nude pictures to her ex-boyfriend, via Facebook Messenger, that were opened and posted by his current girlfriend, Rebekah VanBuren, as revenge.⁶ A trial court initially sided with VanBuren, calling the statute unconstitutional on First Amendment grounds which prompted the appeal to the Vermont Supreme Court.⁷ In 2019, the Vermont Supreme Court ruled the statute was in fact constitutional, but in its decision regarding whether VanBuren had violated the law it set a precedent on what the state must prove when it comes to reasonable expectation of privacy under nonconsensual pornography and revenge porn statutes.⁸ In the majority decision, Justice Beth Robinson wrote, “[b]ecause the State has stipulated that complainant and Mr. Coon were not in a relationship at the time complainant sent Mr. Coon the photo, and there is no evidence in the record showing they had any kind of relationship engendering a reasonable expectation of privacy, we conclude the State has not met its burden” of establishing a reasonable expectation of privacy.⁹ There has already been one other case to use the VanBuren trial as precedent.¹⁰

Massachusetts

Massachusetts doesn’t have specific laws pertaining to “revenge porn” but it does have laws on nonconsensual pornography, which can apply to some forms of revenge porn as well. Section 105 of Massachusetts’ general law states that, “[, w)l(, w)l(, w)Tm [(ul(, w)l(a)4 (ppl)-19.92 Tm [(por)3 (no

imprisonment.”¹⁴ When this crime is committed against a minor the punishment is “imprisonment in the house of correction for not more than 2 1/2 years or in the state prison for not more than 10 years or by a fine of not more than \$10,000, or by both such fine and imprisonment.”¹⁵

South Carolina

South Carolina does not currently have any laws pertaining to nonconsensual pornography or revenge porn. Despite lacking explicit porn statutes, South Carolina has extensive anti-obscenity laws that can apply to revenge porn. Disseminating materials considered obscene to people under the age of eighteen and minors under the age of twelve carry heavy sentences of up to ten- and fifteen-years imprisonment.¹⁶ Participating in the preparation of obscene material is considered a misdemeanor and can be punished with up to one-year imprisonment and a fine of up to \$1,000.¹⁷ For more information on the definitions of obscene material under South Carolina state law, refer to Title 16 Chapter 15 Article 3 Section 16-15-305.

Arizona

Arizona has a law that covers both nonconsensual pornography and “revenge porn.” The law states it is illegal to intentionally disclose an image of another person if that person is identifiable from the image if the depicted person “is depicted in a state of nudity or is engaged in specific sexual activities... has a reasonable expectation of privacy... The image is disclosed with the intent to harm, harass, intimidate, threaten or coerce the depicted person.”¹⁸ The law also explicitly states that “[e]vidence that a person has sent an image to another person using an electronic device does not, on its own, remove the person's reasonable expectation of privacy for that image.”¹⁹ The commission of this crime is considered a Class 5 felony (punishable with up to two years),²⁰ a class 4 felony if the image is disclosed electronically (punishable with up to three years),²¹ or a class 1 misdemeanor if the person threatens to disclose but does not actually disclose an image²² (punishable with up to six months).²³

¹⁴ Mass. Gen. Laws 272 § 105.

¹⁵ Mass. Gen. Laws 272 § 105.

¹⁶ State of South Carolina, Obscenity, Material Harmful to Minors, Child Exploitation, and Child Prostitution, S.C. Code § 16-15-305 (2022), <https://www.scstatehouse.gov/code/t16c015.php>.

¹⁷ S.C. Code § 16-15-305.

¹⁸ State of Arizona, Unlawful disclosure of images depicting states of nudity or specific sexual activities; classification; definitions, ARS § 13-1425(2014), <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/13/01425.htm>.

¹⁹ ARS § 13-1425.

²⁰ State of Arizona, First time felony offenders; sentencing; definition, ARS § 13-702 (2018), <https://www.azleg.gov/ars/13/00702.htm>.

²¹ ARS § 13-702.

²² ARS § 13-1425.

²³ State of Arizona, Misdemeanors; sentencing, ARS § 13-707 (2013), <https://www.azleg.gov/ars/13/00707.htm>.

Pornography Taxation Law

Attempted Legislation

Information and legislation regarding a higher taxation on pornographic materials or adult entertainment is minimal. Some states had attempted to pass legislation before 2010 to impose a higher tax, but Utah is the only state to have successfully done so. States including California, Georgia, Iowa, and Missouri tried, but were unable to pass legislation on taxation of adult entertainment products.²⁴ The proposed bill in California, for example, aimed to tax the porn industry 25 percent on the sale of porn films and on porn studios. his 453 ni 5-16.44(cen)-4TS(-16.o 3 (n)(i)-2 (n)-,

York,³² North Carolina,³³ Indiana,³⁴ and Pennsylvania,³⁵ grant civil cause of action through their legislation. Colorado³⁶ and Vermont³⁷ provide both injunctive relief and private right of action, which allows victims to sue in court.³⁸ Colorado additionally gives authorship access to victims, allowing them to take down images through copyright claims.³⁹

Beyond state-specific private right of action, victims of nonconsensual pornography may be eligible to private right of action through federal law under the Violence Against Women Act Reauthorization Act of 2022.⁴⁰ Courts in Hawaii,⁴¹ New York,⁴² North Carolina,⁴³ and Oklahoma⁴⁴ can order the destruction and removal from distribution of all images and recordings found in violation of the ViolTc 0 Tw 12.88 6(he)4 (V)2 (i)999 BD(V)2gsibutioo .5 (3)JTJEMC /P A/CID 101

in Georgia,⁴⁹ in which the presumption that an internet-based website or system or internet service provider is unaware of the content being distributed is rebuttable. Many states, including Kentucky⁵⁰ and Washington,⁵¹ specifically exempt internet service providers as to not violate 47 U.S. Code § 230.

the community.”⁵⁸ Disqualification from a community based restorative justice program occurs if a person is charged with: “a sexual offense as defined in Section 1 of Chapter 123A; an offense against a family or household member as defined in Section 13M of Chapter 265; or an offense resulting in serious bodily injury or death.”⁵⁹ Since Massachusetts does not have a definitive revenge porn law, with cases instead covered under other pornographic regulation laws,⁶⁰ dissemination of revenge porn does not consider the offender as charged with “a sexual offense” as defined by Chapter 123A(i) unless the material being disseminated depicts a minor, in which then the offender may be charged with a sexual offense, and thus be disqualified from restorative justice programs.⁶¹

Colorado

Restorative justice laws in Colorado are defined in Section 18-1.3-104 as a variety of practices that emphasize repairing the harm caused to victims and the community.⁶² Like Massachusetts, disqualification from a restorative justice program can occur if the person is convicted of “unlawful sexual behavior.” Disqualification can also occur if the offender was convicted of a crime relating to domestic violence, stalking, or a violation of a protection order.⁶³ Since Colorado Statute 18-7-107, the statute on revenge porn, defines the statute pertaining to two parties over the age of eighteen,⁶⁴ offenders are not convicted with “unlawful sexual behavior” and thus are eligible for Colorado restorative justice programs.

Deepfake Porn Regulation

California

The California state legislature passed a law in 2019 pertaining to deepfake images and pornography being disseminated without the “depicted” person’s consent.⁶⁵ The language of this bill is now adopted into Section 1708.86 of the state’s Civil Code. The language of the law defines “depicted individual” as “an individual who appears, as a result of digitization, to be

⁵⁸ Commonwealth of Massachusetts, Restorative Justice, Mass. Gen. Laws 276B § 3 (2018).

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter276B>

⁵⁹ Mass. Gen. Laws 276B § 3.

⁶⁰ Commonwealth of Massachusetts, Photographing, videotaping or electronically surveilling partially nude or nude person or the sexual or other intimate parts of a person around the person's clothing; exceptions; punishment, Mass. Gen. Laws 272 § 105 (2014).

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter272/Section105>

⁶¹ Commonwealth of Massachusetts, Care, Treatment and Rehabilitation of Sexually Dangerous Persons; Definitions, Mass Gen. Laws 123A § 1 (1999).

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123A>

⁶² State of Colorado, Alternatives in imposition of sentence C.R.S. § 18-1.3-104 (2020),

<https://leg.colorado.gov/sites/default/files/images/olls/crs2020-title-18.pdf>

⁶³ C.R.S. § 18-1.3-104 (2020).

⁶⁴ State of Colorado, Posting a private image for harassment, C.R.S. § 18-7-107 (2021).

<https://leg.colorado.gov/sites/default/files/images/olls/crs2021-title-18.pdf>

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