



“Revenge Porn”

David Ward, Legal Voice

October 6, 2015

Overview

- What is “revenge porn”?
- Impact on victims
- Remedies
- Recent legislative efforts in WA and across the country
- Resources

“Revenge Porn” is a misnomer

- “Non-consensual pornography” is more accurate
- Perpetrators often not motivated by revenge

What is Non-Consensual Pornography?

- Distribution of sexually graphic images of individuals without their consent
- Includes, but not limited to:
 - Images originally obtained with consent within the context of a private or confidential relationship (including “selfies”)
 - Hidden recordings
 - Images obtained by hacking computers or phones
 - Recordings of sexual assaults

Extent of the Problem

- Widespread. Images may be distributed by many different means, including
 - Websites
 - Social media
 - Phones
 - E-mail
- Majority of survivors are women and girls

Effect on Survivors

- Severe emotional distress and anxiety reported by most survivors
- Form of sexual abuse
 - Transforms unwilling individuals into sexual entertainment for strangers
- If image is posted online and linked to survivor's name, can be easily located through search engines

Effect on Survivors (cont'd)

- Survivors have been threatened with sexual assault, stalked, and harassed
- Fired from jobs or forced to change schools
- Future employment and educational opportunities limited
- Suicide
- Often a form of DV - threats to disclose images are used to keep survivors from leaving or reporting abuse.
- Used by traffickers and pimps to trap survivors

Existing Legal Remedies

- Criminal
 - Wrongful distribution of intimate images ([HB 1272](#))
 - Cyberstalking ([RCW 9.61.260](#))
 - Voyeurism, in limited case ([RCW 9A.44.115](#))
 - Extortion, in limited cases ([RCW 9A.56.110](#))
 - Child pornography laws, in some cases ([RCW 9.68A](#))
- Civil
 - Tort claims (outrage, invasion of privacy)
 - Distributing intimate images ([HB 2160](#))
- Sexual harassment (if linked to employment or education)
- Copyright law

WA Cyberstalking Law

RCW 9.61.260

A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party

Cyberstalking Law (cont'd)

- (a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;
- (b) Anonymously or repeatedly whether or not conversation occurs; or
- (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

Legislative Response in Washington

- Two bills passed in 2015 legislative session
- HB 1272 – criminal penalties (Rep. Vincent Buys)
- HB 2160 – civil remedies (Rep. Sharon Wylie)

Criminal Bill – HB 1272

- Establishes specific criminal penalties for wrongfully distributing an intimate image
- Signed by Governor July 9, 2015
- Law took effect September 26, 2015
- Will be a new section under RCW 9A

Provisions of HB 1272

- Definitions
- Intent
- Application to minors
- Exceptions and defenses
- Penalties

Definition of the Crime

- Occurs when a person “knowingly **discloses** an **intimate image** of another person and the person disclosing the image”
 - Obtained it under circumstances in which a reasonable person would know or understand the image was to remain **private**
 - Knows or should have known the depicted person has **not consented** to disclosure
 - Knows or reasonably should know that disclosure would **cause harm** to depicted person

If the perpetrator is a minor

- To convict a minor, prosecutors would have to prove the minor “intentionally and **maliciously**” disclosed the image, in addition to other elements.

Definition of “intimate image”

- 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 information displayed with or connected to image, AND was
 - Taken in a **private setting**
 - Not a matter of **public concern**
 - And **depicts**....(see next slide)

“Intimate image” (cont’d)

And depicts:

- **Sexual activity**, including sexual intercourse as defined in RCW 9A.44.010 and masturbation;
OR
- A person’s **intimate body parts**, whether nude or visible through less than opaque clothing, including genitals, public area, anus, or post-pubescent female nipple

Definition of “Disclosing”

- Broad definition
- Includes “transferring, publishing, or disseminating, as well as making a digital depiction available for distribution or downloading...or through any other means of transferring computer programs or data to a computer”

Exceptions

- Does not apply to:
 - Images involving voluntary exposure in public or commercial settings
 - Disclosures made in the public interest, including but not limited to:
 - Reporting of unlawful conduct
 - Lawful and common practices of law enforcement
 - Criminal reporting
 - Legal proceedings
 - Medical treatment

Defenses

- There is an affirmative defense to this crime if defendant is “a family member of a minor and did not intend any harm or harassment in disclosing the image to other family or friends of the defendant”
- But - this defense does not apply to disclosures that would constitute child pornography under RCW 9.68A.011.

Immunity

- These entities are not liable for prosecution solely as a result of content provided by another person:
 - Interactive computer service
 - Provider of public or private mobile service
 - Telecommunications network or broadband provider

Penalties

- Gross misdemeanor for first offense
- Class C felony if defendant has one or more prior convictions for disclosing intimate images

Civil Remedies – HB 2160

- This bill allows survivors to file civil lawsuits against perpetrators
- Signed by Governor on July 9, 2015
- Took effect on September 26, 2015
- Law will be codified as a new section in RCW 4.24

Some Key Provisions of Civil Remedies Bill

- Definition of “intimate image” the same as the criminal bill
- Victims may recover damages for pain and suffering, emotional distress, economic damages, lost earning, and attorneys’ fees
- Courts may also order injunctive relief
- Victims are authorized to use a confidential identity (pseudonym) in all court filings

Response in Other States

- Legislation has passed in 26 states and DC since 2013
 - AK, AR, CA, CO, DC, DE, FL, GA, HI, ID, IL, LA, ME, MD, NV, NJ, NM, NC, ND, OR, PA, TX, UT, VT, VA, WA, WI
 - Significant differences in state laws

Federal Legislation

- Legislation expected to be introduced in Congress
 - In June 2015, Rep. Jackie Speier (CA) stated she will introduce the Intimate Privacy Protection Act, which would make sharing, uploading revenge porn and running revenge porn sites a federal crime
- Section 230 of the federal Communications Decency Act has been interpreted to provide broad immunity to website owners and operators for materials posted by third-party users

Help for Victims

- Cyber Civil Rights Legal Project can provide pro bono legal help for victims:
<https://www.cyberrightsproject.com/>
- [Crisis Hotline](https://www.cybercivilrights.org/crisis-hotline) of Cyber Civil Rights Initiative:
844-878-2274

Removing revenge porn victims' names/images from search engines

- Google policy:
<http://googlepublicpolicy.blogspot.com/2015/06/revenge-porn-and-search.html>
- Microsoft/Bing policy:
<http://blogs.microsoft.com/on-the-issues/2015/07/22/revenge-porn-putting-victims-back-in-control/>

Selected Resources

- Cyber Civil Rights Initiative
www.endrevengeporn.org
- Without My Consent
www.withoutmyconsent.org
- Women Against Revenge Porn
www.womenagainstrevengeporn.com

Questions?

David Ward
Legal & Legislative Counsel
Legal Voice
dward@legalvoice.org
(206) 682-9552, ext. 112