NC's New "Revenge Porn" Law: responding to revenge porn crimes and working with survivors

Amily McCool, MSW, JD
Legal & Policy Director
The NC Coalition Against Domestic Violence
We are a statewide membership organization serving close to 90 domestic violence centers and all 100 counties of NC.

Mission: NCCADV leads the state’s movement to end domestic violence and to enhance work with survivors through collaborations, innovative trainings, prevention, technical assistance, state policy development, and legal advocacy.

4 branches:

- Technical Assistance
- Training
- Programs
- Public Policy
Group Agreements

- Respect each other
- Use “I” statements
- Assume & bring best intentions
- Step up, step back
- Lean into discomfort
- Recognize that we are in the room
- Take care of yourselves
- Ask questions
- Have fun!
Objectives

Increase awareness of the conduct and harms of “revenge porn.”

Learn the legal requirements and gaps for NC’s new crime of “Disclosure of private images.”

Learn tips for working with survivors of “revenge porn.”
“Revenge” Porn/Nonconsensual Pornography

“Revenge” porn is sexually explicit media that is distributed without the consent of the pictured individual.

- Intent in context of domestic violence is **Power & Control** → Not “revenge”
- Advocates often refer to this form of abuse as nonconsensual pornography
- “Revenge” implies victim is to blame or that the perpetrator has a “right” to “get even” or “get revenge”
ONE IN TEN ex-partners have threatened that they would expose risqué photos of their ex online.

Infographic: http://dmcadefender.com/victim-of-revenge-porn/
A Violation

60 PERCENT of those who threatened to expose intimate photos followed through on their threats.

Infographic: http://dmcadefender.com/victim-of-revenge-porn/
Information Posted with Revenge Porn

In addition to explicit images, perpetrators post other identifying information to revenge porn sites, resulting in harassment of victims.

Social Security Number: 2%
Work Address: 14%
Physical Home Address: 16%
Phone Number: 20%
Email Address: 26%
Social Network Info: 49%
Full Name: 59%

Infographic: http://dmcadefender.com/victim-of-revenge-porn/
VICTIMS OF REVENGE PORN

90%  
90 percent of revenge porn victims are women.

93%  
93 percent said they have suffered significant emotional distress due to being a victim.

49%  
49 percent said they have been harassed or stalked online by users who saw their material.

Infographic: http://dmcadefender.com/victim-of-revenge-porn/
New Crime Created: “Disclosure of Private Images” (N.C.G.S. 14-190.5A)

Effective December 1, 2015

NC’s stalking/cyberstalking/harassment laws didn’t cover behavior
Key Provisions- Crime to:

- Knowingly disclose an image of another person with the intent to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person (or cause others to do so)
  - Depicted person is identifiable by image itself or information offered in connection with image
  - Depicted person’s intimate parts are exposed or is engaged in a sexual conduct
  - Defendant disclosed image without affirmative consent of depicted person
  - Defendant disclosed the image when they knew or should have known that the depicted person had a reasonable expectation of privacy in the image
    - Depicted person consented to disclosure of image within personal relationship as defined by 50B + believes the disclosure will not go beyond that relationship.
“Personal Relationship” as defined in 50B-1(b):

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren.
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship.
“Personal Relationship”

- **50B:**
  - What intimate partner relationship is NOT directly covered under the definition of “personal relationship”?
    - Same-sex relationships
  
- Can a survivor in a same-sex relationship EVER have a “personal relationship” for purposes of “disclosure of private images”?
  - Yes
    - When the survivor lives or previously has lived with their same-sex partner (50B-1(b)(5)- household members)
    - Same sex partners who are married in NC or who were married in another state (50B-1(b)(1))
“Dating relationship” Definition

- 50B-1(b) defines “Dating relationship” as:
  - One wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

- NC Court of Appeals case: *Thomas v. Williams* (July 7, 2015)
  - Held that parties who had only been dating three weeks were in a dating relationship
  - Said that “dating relationship” and “over time” should be “construed broadly”
  - Fact-sensitive inquiry: Laid out a 6-factor test to analyze whether parties are in a dating relationship
Disclosure of Private Images

- Limitations:
  - Does not criminalize dissemination of images obtained outside of intimate partner or other “personal relationship” categories
  - Who is left out?
    - Same-sex dating partners who have not lived together
    - Acquaintances who engage in sexting/sharing of images but have not dated
    - “Hacking” cases of strangers
More limitations:

- Does not criminalize dissemination of images obtained within “personal relationship” but obtained WITHOUT consent/knowledge of intimate partner
  - Look at definition under (a)(5) of “reasonable expectation of privacy”: When a depicted person has consented to the disclosure of an image within the context of a personal relationship....
Want to Help?

- Interested in helping expand “Disclosure of Private Images”?

  1. Go to NCCADV’s website and sign up for alerts
Interested in helping expand “Disclosure of Private Images”? 

2. If you have specific stories of victims you’ve helped (or if you help in the future) who would still not be protected by this crime, or are law enforcement/prosecutors who can speak to the need for expansion and are willing to share those stories (respecting victims’ confidentiality), please email Amily at amccool@nccadv.org
Secret Peeping statute *MIGHT* be a recourse in those situations

- **NCGS 14-202**
  - Subsection (f): Any person who, for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent shall be guilty of a Class I felony.
  - Subsection (h): Any person who disseminates or allows to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of this section shall be guilty of a Class H felony if the dissemination is without the consent of the person in the photographic image.
  - BUT it requires that it be for the purpose of sexual gratification/desire
  - Sometimes taking pictures of partner for other purposes (to coerce, harass, intimidate, demean, humiliate, cause financial loss, etc.)
NCCADV worked with legislators and the NC Conference of District Attorneys to ensure that the offense will be a **felony** for all adult offenders on the first offense (Class H Felony) and a felony on the second offense if defendant is under 18 years old.

- Class 1 misdemeanor for first offense for defendants under age 18
Disclosure of Private Images

Strengths:

- Felony for adult first-time offenders
- Includes the criminalization of dissemination of images which were originally obtained with victim’s “consent”
Working with Survivors of “Revenge” Porn/Nonconsensual Porn

- 1. Be Non-judgmental!!
- 2. Be Non-judgmental!!
- 3. Be Non-judgmental!!
Working with Survivors of “Revenge” Porn/Nonconsensual Porn

- Do not blame the victim for:
  - Taking the pictures
  - Sending the pictures
  - “Allowing” the pictures to be taken, etc.

- Intimate partner relationship
  - What is at the heart of an intimate relationship that makes it different than other relationships?
    - Sex/Intimacy
    - Trust
Victims in relationships with abusive partners
  - Sexual abuse and coercion is part of power and control
Working with Survivors of “Revenge” Porn/Nonconsensual Porn

- Victims in relationships with abusive partners
  - Sexual abuse and coercion is part of power and control
  - “Consent” to participating in sex acts, sending images, etc. is blurred at best and often outright forced
Focus should be on PERPETRATOR and violation of trust
- Key to apartment

Culture’s reaction to sex → should be private
- But who broke the “privacy rule”
  - Victim or perpetrator?
Reality of cultural norms

- 2012 Harris Interactive Poll of 2097 adults found that 1 in 5 Americans send explicit text messages [link](http://www.huffingtonpost.com/2012/06/08/adult-sexing_n_1581234.html)

- A report released from security software firm McAfee in 2014 found that half of adults’ phones contained “sexting” content [link](http://promos.mcafee.com/offer.aspx?id=605366&culture=en-us&cid=140612)
Working with Survivors of “Revenge” Porn/Nonconsensual Porn

- Importance of documentation
- Tracking & Removal options
- Civil options
- Criminal options
Working with Survivors of “Revenge” Porn/Nonconsensual Porn

- Keep evidence
  - Encourage survivor to document and save everything
    - Capture screenshots
      - Webpages
      - Google search results
      - Any messages received as result of posting (texts, facebook messages, emails, etc.)
  - Create a timeline
  - Print everything

- Counter to impulse
Working with Survivors of “Revenge” Porn/Nonconsensual Porn

- Tracking and Removal options

- Report to the site or to Internet Service Provider (ISP) to remove content/site

- Reporting inappropriate or false content/pages to site owner may result in removal of content or page if it violates terms of use.
  - Discuss beforehand
  - Removing posts may not stop the abuse and may escalate control and harassment
  - Document content BEFORE removing posts
  - Much harder to remove posts than for abuser to re-post
Selected Sites: Removal Process

- Google Search Results
- Facebook

For online guide: [http://www.cybercivilrights.org/online-removal/](http://www.cybercivilrights.org/online-removal/)
  - Facebook
  - Twitter
  - Instagram
  - Reddit
  - Tumblr
  - Yahoo
  - Google
  - Microsoft
Removal Process - Google Search

- Remove from Google search results
  - [https://support.google.com/websearch/troubleshooter/3111061#ts=2889054%2C2889099](https://support.google.com/websearch/troubleshooter/3111061#ts=2889054%2C2889099)

- Survivors can complete a form to request Google to remove an explicit photo or sensitive personal information from a Google search result

- This does NOT take down the actual webpage or content, but removes it from Google search result
  - Survivor must contact the webmaster of the page for removal of the content from online.
Removal of content/user is based on:

- Terms of Service, Content Policies, Community Guidelines/Standards
- Copyright/Ownership
  - “notice & takedown procedures.”
Tips for Survivors

- Removing tag won’t remove content.
- Should safety plan around blocking someone.
- Removing content can remove evidence.

Privacy & Safety on Facebook: A Guide for Survivors
  - www.nnedv.org/FacebookPrivacy
Take Down Requests

- Hire a “takedown” service or do-it-yourself (DIY)

- Takedown services
  - DMCA defender: (www.dmca.com)
  - Copybyte (https://copybyte.com/stop-revenge-pornography/)

- Do it Yourself Option
  http://www.womenagainstrevengeporn.com/#/!
  dmca-notice/cooy
Take Down Requests

  - Submit DMCA Takedown notices and google link removal requests
  - Substantially lower fee than most
  - Stays on top of search results for a year
  - Guarantees removal from MyEx.com
  - Will copyright material for victims
  - Might do it pro bono- often a waitlist
Create a google alert

- By creating a Google Alert, survivor can get email notifications any time Google finds new results.
- For example, survivor could get updates when abuser posts something that includes survivor’s name/nickname etc. on the web, thereby being notified that a new “revenge porn” picture/video was posted.

https://support.google.com/alerts/answer/4815780?hl=en&ref_topic=3246333
How Google Alerts work

By creating a Google Alert, you can get email notifications any time Google finds new results on a topic that interests you.

For example, you could get updates about a product you like, find out when people post something about you on the web, or keep up with news stories.
Create an alert

1. Visit Google Alerts.
2. In the "Create an alert about" box, enter the words you want to get email notifications for.
3. Click Show options to say how often you get alerts, what types of results you want to get, and more.
4. Click Create Alert.
5. Once your alert is set up, you'll start getting emails any time we find new search results for your keywords.

You can also create an alert by clicking the + next to any of the suggested topics on the Google Alerts page.
Civil Remedies

- Domestic Violence Protective Orders/50Bs
  - Domestic violence no contact orders
  - Heightened remedies
  - Enforceable by law enforcement

- Civil Lawsuits
  - Focus on harm done and collecting damages
Include abuser’s actions in a protection order.
  - Under “other”: Order defendant not to disseminate any images of the plaintiff

**Complaint:**

- [ ] 16. I want the defendant to be ordered to make payments for my support as required by law, but I understand it is only temporary and that I must file a separate action for regular permanent spousal support.
- [x] 17. Other: (specify)
  
  I want the defendant to be ordered not to disseminate or distribute any images of me.

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<th>Date</th>
<th>Signature Of Plaintiff (Person Filing Complaint)</th>
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**VERIFICATION**

I, the undersigned, being first duly sworn, say that I am the plaintiff in this action; that I have read the Complaint and Motion; that the

**DVPO Order:**

- [x] 14. Other: (specify) [08]
  
  Defendant is ordered not to disseminate or distribute any images of the Plaintiff.

- [ ] 15. this action is dismissed and as of this date any ex parte order issued in this case is null and void.
HB 792 created civil cause of action if person’s image is disclosed or used as described in criminal offense for “Disclosure of Private Images”

- against any person who discloses or uses the image
- entitled to recover from the other person any of the following:
  - (1) Actual damages, but not less than liquidated damages, to be computed at the rate of one thousand dollars ($1,000) per day for each day of the violation or in the amount of ten thousand dollars ($10,000), whichever is higher.
  - (2) Punitive damages.
  - (3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

Statute of Limitations:

- no more than one year after the initial discovery of the disclosure, but in no event may the action be commenced more than seven years from the most recent disclosure of the private image.
Civil Remedies: Private Right of Action

- K&L Gates
  - Offer pro bono (free) legal services to victims of revenge porn through their Cyber Civil Rights Legal Project
  - Go to [http://www.cyberrightsproject.com/](http://www.cyberrightsproject.com/) for more information and to fill out a contact form.
Report to law enforcement

- May meet new crime of “Disclosure of Private Images” or “Secret Peeping”
  - Recommend advocates assist victims by:
    - 1) accompanying them when reporting and
    - 2) printing out the new law and taking it with them when reporting. Many law enforcement will not be familiar with the new law yet

- Even if doesn’t meet the elements of new crime→ law enforcement may still be able to document with a report of harassment
Resources & Credits

- Cyber Civil Rights Initiative: [www.endrevengeporn.org](http://www.endrevengeporn.org)
  - Crisis Helpline at 844-878-2274. (24 hours/7 days week)
Resources & Credits

- National Crime Victim Bar Association (resources for victims interested in pursuing civil justice):

- Civil Justice for Victims of Crime in North Carolina Brochure:
Questions?

Amily McCool, MSW, JD
Legal & Policy Director

amccool@nccadv.org
919-956-9124 x 211