



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE July 21, 2023

TO Joint Judiciary Committee

FROM Brian Fuller, Senior Staff Attorney

SUBJECT Sextortion and Revenge Porn Laws

This memorandum responds to a Committee request at the April 2023 meeting for information regarding sextortion and revenge porn. The memo describes Wyoming law that may apply to these actions and other applicable state and federal laws.

Generally, "sexortion" occurs when an actor threatens another person to distribute the person's private and sensitive material unless the person provides the actor with additional sexual images, sexual favors, or money.¹ The FBI characterizes sextortion as a "serious crime."² Similarly, "revenge porn" generally refers to the distribution of private sexual images, regardless of whether the images were originally obtained with or without consent of the person in the images.³ In addition to revenge, the distribution may be motivated by a desire for profit, notoriety, entertainment, or no specific reason at all.⁴

Wyoming Law

In 2021, the Legislature enacted a criminal statute that prohibited the unlawful and nonconsensual dissemination of intimate images.⁵ A person is guilty of this offense if the person disseminates an intimate image of another person when the person knows (or should have known) that the depicted person had a reasonable expectation that the image would

¹ Fed. Bureau of Investigation, What is Sextortion? available at <https://www.fbi.gov/video-repository/newss-what-is-sexortion/view> (last visited July 19, 2023).

² Id.

³ See People v. Austin, 155 N.E.3d 439, 451 (Ill. 2019).

⁴ Id.

⁵ 2021 Wyo. Session Laws, Ch. 85.

remain private and didn't give express consent for the dissemination.⁶ The dissemination must also have been intended to humiliate, harm, harass, threaten, or coerce the depicted person (or the dissemination must have been intended for sexual gratification or arousal of the person or others).⁷

For purposes of this criminal offense, an image includes photos, film, videos, recordings, digital files, and computer-generated images that purport to represent an identifiable person.⁸ Dissemination means to sell, distribute, deliver, provide, exhibit, post on social media, or otherwise make available to a third party.⁹ Violating this dissemination prohibition is a misdemeanor punishable by up to one year of imprisonment, a fine up to \$5,000, or both.¹⁰ This offense likely can be considered a "revenge porn" prohibition. The full text of the statute is in Appendix A at the end of this memorandum.

Although not directly addressing or specifically limited to sextortion, Wyoming's blackmail statute prohibits a person from, with the intent to compel action or inaction by any person against his will, accusing or threatening to accuse a person of a crime or immoral conduct that would tend to degrade or disgrace the person or subject the person to the ridicule or contempt of society.¹¹ Wyoming's current blackmail statute is intended to embrace the separate crimes of blackmail and extortion.¹² Blackmail is a felony punishable by imprisonment for up to ten years; if the actor causes bodily injury to another person while committing blackmail, the actor is subject to imprisonment between 5 and 25 years.¹³

Other Sextortion and Revenge Porn Laws

Below is a brief sampling of other states' offenses that prohibit sextortion:

- North Dakota: A person commits sexual extortion if the person, with the intent to coerce a victim to engage in sexual contact or conduct or with the intent to produce an image or video of any person engaging in sexually explicit conduct, communicates a threat to the victim's person, property, or reputation or a threat to distribute or an enticement to delete an image or video of the victim.¹⁴ North Dakota's law also prohibits a person from knowingly causing a victim to engage in

⁶ W.S. 6-4-306(b).

⁷ W.S. 6-4-306(b).

⁸ W.S. 6-4-306(a)(iii).

⁹ W.S. 6-4-306(a)(ii).

¹⁰ W.S. 6-4-306(c).

¹¹ W.S. 6-2-402(a)(ii).

¹² W.S. 6-2-402(e).

¹³ W.S. 6-2-402(b)-(c).

¹⁴ N.D. Cent. Code § 12.1-20-12.3(1)(a).

sexual contact or conduct by means of a threat to the person's property, person, or reputation or by a threat to distribute or an enticement to delete an image or video of the victim.¹⁵

- Texas: A person commits sexual coercion if the person intentionally threatens (including by coercion or extortion) to commit a sex-related offense or a homicide-related offense to obtain, in return for not committing the threatened offense, intimate visual material, an act of sexual conduct, or a monetary benefit.¹⁶
- Arizona: A person commits sexual extortion if the person threatens, with the intent to coerce, another person to engage in sexual conduct, allow the creation of intimate images, or exhibit the person's genitals, anus, or breasts.¹⁷

For revenge porn, most states (including Wyoming, as discussed above) have enacted statutes criminalizing the nonconsensual dissemination of private sexual images.¹⁸ Below is a brief description of other states' laws prohibiting revenge porn:

- Colorado: Colorado has two offenses related to revenge porn.
 - First, Colorado has the offense of posting a private image for harassment, which prohibits a person age 18 or older from posting a private image for harassment if the person posts or distributes the image online that displays the private intimate parts of a person 18 or older: (1) with the intent to harass the person and to inflict serious emotional distress on that person; (2) without the person's consent or when the actor knew or should have known that the person had a reasonable expectation that the image would remain private; and (3) the conduct results in serious emotional distress of the person.¹⁹
 - Second, Colorado has a separate offense for posting a private image for pecuniary gain. A person commits this offense by posting or distributing an image or video online that displays the private intimate parts of another person: (1) with the intent to obtain a pecuniary benefit from any person as a result of the posting, viewing, or removal of the private image; and (2) when the actor hasn't obtained the depicted person's consent or when the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private.²⁰
- Utah: A person commits the offense of distribution of an intimate image if the actor: (1) knowingly or intentionally distributes an intimate image of a person 18 or older and knows or should have known that the distribution would cause a reasonable

¹⁵ N.D. Cent. Code § 12.1-20-12.3(1)(b).

¹⁶ Tex. Penal Code § 21.18.

¹⁷ Ariz. Rev. Stat. § 13-1428.

¹⁸ Austin, 155 N.E.3d at 452.

¹⁹ Colo. Rev. Stat. § 18-7-107.

²⁰ Colo. Rev. Stat. § 18-7-108.

person to suffer emotional distress or harm; (2) the actor didn't receive consent from the depicted person; (3) the intimate image was created by or provided to the actor under circumstances where the depicted person has a reasonable expectation of privacy; and (4) actual emotional distress or harm is caused to the depicted person.²¹

- Montana: A person commits the offense of violating privacy in communications if the person knowingly or purposely, with the purpose to terrify, intimidate, harass, threaten, or injure, publishes, or distributes intimate photos or images.²²
- South Dakota: No person shall use or disseminate in any form any intimate image or video without consent of the depicted person with the intent to, among other things, harass or embarrass and invade the privacy of the depicted person under circumstances where the depicted person has a reasonable expectation of privacy.²³

Please let me know if you have any questions or require further information.

²¹ Utah Code Ann. § 76-5b-203.

²² Mont. Code Ann. § 45-8-213(1)(d).

²³ S.D. Codified Laws § 22-21-4.

Appendix A: W.S. 6-4-306

6-4-306. Unlawful dissemination of intimate images; definitions; penalties; exemptions from liability.

(a) As used in this section:

(i) "Displaying sexual acts" means displaying an image of sexual acts regardless of whether a person's intimate parts are visible in the image;

(ii) "Disseminate" means to sell, distribute, deliver, provide, exhibit, post on social media or otherwise make available to a third party, but shall not include displaying an intimate image in private to the person depicted in the image;

(iii) "Image" means a photograph, film, videotape, recording, digital file or any other recording, including a computer generated image that purports to represent an identifiable person;

(iv) "Intimate image" means an image of a person's intimate parts or of a person engaging in sexual acts when the person depicted is identifiable from the image itself or from information displayed with or otherwise connected to the image;

(v) "Intimate parts" means the external genitalia, perineum, anus or pubic area of any person or the breast of a female person;

(vi) "Sexual acts" means sexual intercourse, cunnilingus, fellatio, analingus, anal intercourse or any intrusion, however slight, by any object or any part of a person's body into the genital or anal opening of another person's body if the intrusion can reasonably be construed as being for the purpose of sexual arousal, gratification or abuse;

(vii) "Social media" means any electronic medium, including an interactive computer service, telephone network or data network, that allows users to create, share, post or view user generated content, including but not limited to images, videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or internet website profiles.

(b) A person eighteen (18) years of age or older is guilty of the offense of disseminating an intimate image if the person:

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(i) Disseminated an intimate image of another person;

(ii) Knew or should have known that the depicted person had a reasonable expectation that the image would remain private and the depicted person did not expressly give consent for the image's dissemination; and

(iii) Intended:

(A) To humiliate, harm, harass, threaten or coerce another; or

(B) For sexual gratification or arousal of others or of the person disseminating the intimate image.

(c) Dissemination of an intimate image is a misdemeanor punishable by not more than one (1) year imprisonment, a fine of not more than five thousand dollars (\$5,000.00), or both.

(d) Nothing in the section shall be construed to impose criminal liability on the provider of an interactive computer service as defined in 47 U.S.C. § 230, an information service as defined in 47 U.S.C. § 153 or a telecommunications service as defined in 47 U.S.C. § 153, for content provided by another person.