



DIVISION OF CRIMINAL JUSTICE
EXECUTIVE SUMMARY IN SUPPORT OF H.B. 5056
AN ACT CONCERNING THE UNLAWFUL DISSEMINATION OF
INTIMATE IMAGES

SUMMARY: Sexual exploitation online has been a constant presence. The prevalence and invasiveness of non-consensual pornography (NCP) has grown and expanded from unauthorized sharing of intimate images (“revenge porn”), to the criminal enterprise of sextortion. Similar to the creation and promotion of child pornography, NCP and sextortion have horrific effects on the victim - once on the internet, the images and personal information of the victims can never be fully removed. Offender studies have shown that increased penalties including harsher punishment have a significant deterrent effect on potential offenders. Even with an elevation of certain provisions of C.G.S. §53a-189c from a class A misdemeanor to a class D felony, sufficient safeguards exist within the Connecticut criminal justice system to prevent the disproportionate punishment of adolescent and young adult offenders, while elevating this offense to reflect the increasing threat of victimization of minors and the significant lasting harm done to the victims.

LEGAL STATUS IN OTHER STATES

Although over 46 states have adopted various statutes addressing the issue of illegal dissemination of “intimate images,” there is no singular legal definition of what constitutes NCP.¹ Generally, NCP is defined as “obtaining, sharing or distributing intimate images of another without permission.”² With sextortion, an offender obtains NCP and subsequently threatens to expose or distribute these intimate images for the primary purpose of “obtaining additional images of a sexual nature, sexual favors, or money.”³ An offender’s purpose in disseminating NCP is to publicly humiliate the victim, while the offender’s purpose for committing sextortion is to privately coerce the victim to comply with their demands.⁴

Currently, 24 states (including Maine, New Hampshire, New Jersey, and Rhode Island) classify dissemination of NCP and sextortion related activities as a felony offense.⁵ Other states classifying the offense as a misdemeanor include provisions increasing the offense to a felony in certain circumstances, including if the victim was under 21 years old, if the offender is a repeat offender, or if the offender

¹ 46 States + DC + One Territory NOW have Revenge Porn Laws. 01 08 2019. <https://www.cybercivilrights.org/revenge-porn-laws/>.

² Eaton, Asia A., Holly Jacobs and Yanet Ruvalcaba. "2017 Nationwide Online Survey of Nonconsensual Porn Victimization and Perpetration." 2017. <https://www.cybercivilrights.org/wp-content/uploads/2017/06/CCRI-2017-Research-Report.pdf>.

³ Federal Bureau of Investigations. "2018 Internet Crime Report." 2018. https://pdf.ic3.gov/2018_IC3Report.pdf. 15.

⁴ Patchin, Justin W. and Sameer Hinduja. "Sextortion Among Adolescents: Results from a National Survey of U.S. Youth." *Annals of Sex Research* (2018), 4. https://www.researchgate.net/profile/Justin_Patchin/publication/327966075_Sextortion_Among_Adolescents_Results_From_a_National_Survey_of_US_Youth/links/5bb28a4a299bf13e6059f783/Sextortion-Among-Adolescents-Results-From-a-National-Survey-of-US-Youth.pdf?or.

⁵ 46 States + DC + One Territory NOW have Revenge Porn Laws, *supra* note 1.

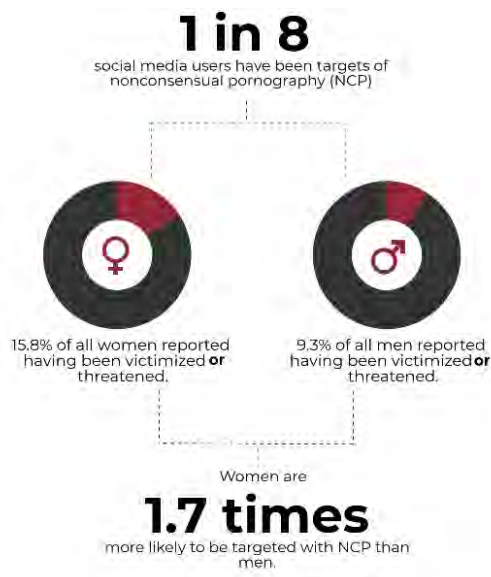
sought financial gain.⁶ Several states also include the act of threatening dissemination of NCP (without actual dissemination) as a criminal offense.

VICTIMIZATION STUDIES

NCP and sextortion are growing problems that affect all users, regardless of age or gender. A 2016 study encompassing a nationally representative sample of 3,002 internet users 15 years of age and older found that overall, 4% of all internet users in the United States had either “sensitive images” of themselves posted online without their consent, or had someone threaten to post “sensitive images” of them without their consent.⁷ Other findings include:

- 3% of all male users experienced NCP or threatened NCP
- 5% of all female users experienced NCP or threatened NCP
- 10% of users between the ages of 18-29 years old (male & female combined) have experienced NCP or threatened NCP
- 12% of women under the age of 30 years old have experienced NCP or threatened NCP

A similar study was conducted in 2019, involving 3,044 adult online social media users. This study found that the rate of NCP victimization had increased to 9% of women and 7% of men.⁸



⁶ Ibid.

⁷ Lenhart, Amanda, Michele Ybarra and Myeshia Price-Feeney. "Nonconsensual Image Sharing: One in 25 Americans Has Been a Victim of "Revenge Porn." 2016. https://datasociety.net/pubs/oh/Nonconsensual_Image_Sharing_2016.pdf.

⁸ Ruvalcaba, Yanet and Asia Eaton. "Nonconsensual Pornography Among U.S. Adults: A Sexual Scripts Framework on Victimization, Perpetration, and Health Correlates for Women and Men." Psychology of Violence (2019). <https://www.cybercivilrights.org/wp-content/uploads/2019/03/Psychology-of-Violence.pdf>

⁹ <https://www.cybercivilrights.org/2017-research-infographic/>

¹⁰ Wittes, Benjamin, Cody Poplin, Quinta Jurecic, and Clara Spera. Sextortion: Cybersecurity, teenagers, and remote sexual assault. Brookings Institute, 2016. <https://www.brookings.edu/research/sextortion-cybersecurity-teenagers-and-remote-sexual-assault/>

Most disturbingly, minors are the most susceptible to this type of crime. As identified by the Department of Justice in their 2016 report "National Strategy for Child Exploitation Prevention and Interdiction,"

*"sextortion"—that is, hacking, coercing, or otherwise obtaining incriminating photos or information of minors and then threatening to expose them if the minors do not perform sex acts via web cameras—has become a major threat in recent years. This new threat requires both an aggressive offense in the form of investigations and prosecutions of offenders and a good defense by informing parents, educators, and children about this threat.*¹¹

In examining sextortion victimization of minors (12-17 years old), a 2018 study revealed that out of a sample size of 5,578 respondents, a total of 5% of all respondents reported being victims of sextortion.¹² This study showed an equal split between males and females, with the most significant incidence of sextortion occurring amongst 15-year-olds.¹³

Results of the 2016 National Strategy survey indicate that sextortion is by far the most significantly growing threat to children, with more than 60% of survey respondents indicating this type of online enticement of minors was increasing.

- Department of Justice. "National Strategy for Child Exploitation Prevention and Interdiction." 2016.

Increasingly, sextortionists are utilizing the newest iteration of the "scare scam" as part of their criminal activity. As presented by the FBI in its 2018 Internet Crime Report, the majority of extortion complaints received in 2018 were part of a sextortion campaign in which victims received an email threatening to send a pornographic video of them or other compromising information to family, friends, coworkers or social network contacts if a ransom was not paid.¹⁴ Although the offender may not actually have any images or other information about the victim, the fear and psychological damage to victims are just as real as if the offender did actually have them.¹⁵

PUNISHMENT & DETERRENCE

Contrary to the general findings that incarceration does not deter criminality, a study conducted on 159 sextortion/NCP offenders showed that more than half of the offenders stated they would have stopped

¹¹ Department of Justice. "National Strategy for Child Exploitation Prevention and Interdiction." 2016. <https://www.justice.gov/psc/file/842411/download>.

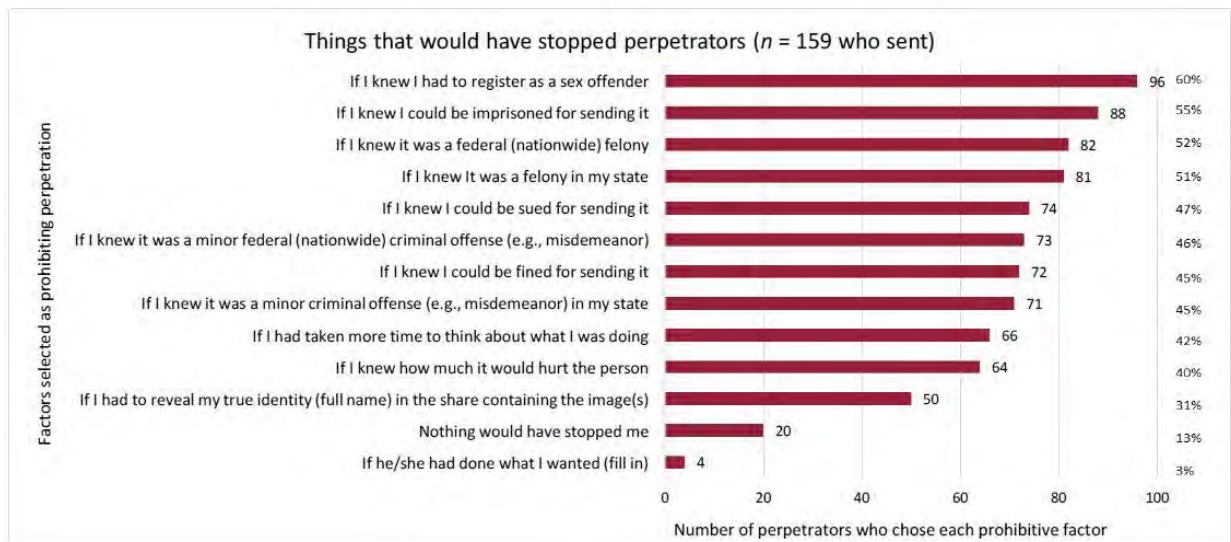
¹² Patchin and Hinduja, *supra* note 4, at 8.

¹³ *Id.*

¹⁴ Federal Bureau of Investigations, 2018 Internet Crime Report. Department of Justice.

¹⁵ Fazzini, Kate. "Email sextortion scams are on the rise and they're scary — here's what to do if you get one." 7 June 2019. CNBC. 12 August 2019. <https://www.cnbc.com/2019/06/17/email-sextortion-scams-on-the-rise-says-fbi.html?&qsearchterm=malwarebytes>, International Centre for Missing & Exploited Children, 13

what they were doing if they were aware of the punishment related to the offenses, particularly concerning incarceration, status as a felony offense and sex offender registration.¹⁶



As presented:

- 60% said they would have stopped if they knew they had to register as a sex offender
- 55% said they would have stopped if they knew they could be imprisoned for sending NCP
- 51% said they would have stopped if they knew it was a felony (state or federal)
- 45% said they would have stopped if they knew it was a misdemeanor (state or federal)¹⁷

This demonstrates that increased penalties related to these offenses do have a noticeable effect, particularly when classifying the offense as a felony, as opposed to a misdemeanor.¹⁸

THE DAMAGING EFFECT ON VICTIMS

The harm to victims of NCP and sextortion is immeasurable, often mirroring the experiences of sexual assault victims. Victims often felt helpless, with little recourse and little help. Victims often suffer depression and anxiety, engage in self-harm (through various forms of self-mutilation, substance abuse, and self-destructive behavior), and in some cases attempt or commit suicide.¹⁹ A study conducted by the Cyber Civil Rights Initiative of 341 victims of NCP or sextortion revealed the following:

- 93% of victims said they have suffered significant emotional distress due to being a victim
- 82% reported that they suffered significant impairment in social, occupational, or other important areas of functioning
- 51% stated they had experienced suicidal thoughts

¹⁶ As previously presented, the offenders were presented with multiple choice and could choose up to 5 answers as what would have had a deterrent effect on them. Eaton, Jacobs and Ruvalcaba, *supra* note 2, at 22.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

- 49% reported that they were harassed or stalked online by users who had seen their images
- 42% sought psychological services
- 30% reported that they were harassed or stalked outside of the internet by users who had seen their images
- 24% knew additional victims targeted by same offender²⁰

PROPOSED LEGISLATIVE CHANGES & EFFECTS ON CURRENT STATUS of C.G.S. §53a-189c

The proposed legislative changes would:

- 1) Make the unlawful dissemination of intimate images to more than one person via an interactive computer system a class D felony,
- 2) Effectively increases the statute of limitations for an offense committed under to subsection (c)(2) to five years.

Under subsection (c)(1), prior statutory provisions classifying the offense as a class A misdemeanor remain unchanged.

Additional recommendations include eliminating an exemption from the provisions of C.G.S. §53a-189c (b)(2) if personally identifiable information is included as part of the posted image. This would assist in prosecuting cases where the face of the victim is obscured, but additional personal information (i.e.: name and/or contact information) is provided as part of the dissemination.

Classifying an offense committed under subsection (c)(2) of the proposed legislation would bring parity between C.G.S. §53a-189c and other similar offenses involving the illegal dissemination of personal information or illicit images, including:

- C.G.S. §53a-90a – Enticing a Minor (via interactive computer service) – D felony²¹
- C.G.S. §53a-129d – Identity Theft in the Third Degree – D felony
- C.G.S. §53a-129e – Trafficking in Personal Identifying Information – D felony
- C.G.S. §53a-189a – Voyeurism – D felony²²
- C.G.S. §53a-198b – Dissemination of Voyeuristic Materials – D felony
- C.G.S. §53a-196 – Obscenity as to Minors – D felony
- C.G.S. §53a-196f – Possession of Child Pornography in the Third Degree – D felony

PROSECUTION & SAFEGUARDS

As presented in the Sentencing Commission discussions last legislative session concerning S.B. 843 (2019), opponents to the proposed change to C.G.S. §53a-189c cite concerns for teenagers or young adults who may “unintentionally” commit this crime facing a potential felony conviction if the proposed legislation passes. Currently, sufficient safeguards exist within the Connecticut criminal justice system to allay these concerns:

- Pursuant to C.G.S. Title 46b, Chapter 815t, offenders under the age of 18 years old will be referred to juvenile court, which include the safeguards of closed proceedings and confidential sealed/expunged records

²⁰ Cyber Civil Rights Initiative. "End Revenge Porn - Revenge Porn Statistics." n.d. Cyber Civil Rights Initiative. Document. 23 August 2019. <https://www.cybercivilrights.org/wp-content/uploads/2014/12/RPStatistics.pdf> .

²¹ Under C.G.S. §53a-90a(a)(2), the penalty is increased to a class B felony with 5 years mandatory minimum sentence if the victim is under 13 years of age.

²² Under C.G.S. §53a-189a(c), the penalty is increased to a C felony if the victim is under 16 years of age.

- Pursuant to C.G.S. §54-56e, offenders 18 years of age or older are eligible for pretrial diversion under the Accelerated Pretrial Rehabilitation program, resulting a dismissal of charges and expungement of offense upon successful completion of the diversionary period
- Pursuant to subsection (c)(1) of the proposed legislation, discretion exists to charge the offender with a class A misdemeanor, or alternatively charge the offender under C.G.S. §53a-196h if the offender is under the age of 18 years of age.

Aggressive public service announcements and community / school based intervention presentations directed at at-risk teenagers addressing the dangers of NCP and sextortion and potential penalties for offenses can further mitigate any concerns regarding teenage involvement.²³

CLOSING

Sextortion and NCP related crimes are on the rise, and the effects on the victims are devastating. These crimes affect do not discriminate based upon sex, age, or gender, and like child pornography, once an image is posted on the internet, it is almost impossible to remove. Classifying the dissemination of intimate images to more than one person via an interactive computer system as a class D felony will serve the significant public interest in combatting the growing threat of dissemination of nonconsensual pornography and sextortion, and sufficient safeguards exist within the criminal justice system to minimize disproportionate effects on offenders.

ADDITIONAL REFERENCES/WEBSITES ON NCP & SEXTORTION

National Center for Missing & Exploited Children -

<http://www.missingkids.org/gethelpnow/isyoudiscoverexplicitcontentoutthere>

Cyber Civil Rights Initiative - <https://www.cybercivilrights.org/online-removal/>

THORN - <https://www.thorn.org/sextortion/>

Canadian Centre for Child Protection - https://needhelpnow.ca/app/en/removing_pictures-other

Project Arachnid - <https://projectarachnid.ca/en/#top>

Utset, Karla. "Drawing the Line: The Jurisprudence of Non-Consensual Pornography and the Implications of Kanye West's Famous Music Video." *University of Miami Law Review* (2018): 920-971. Law Review.

<https://repository.law.miami.edu/cgi/viewcontent.cgi?article=4538&=&context=umlr&=&sei-redir=1&referer=https%253A%252F%252Fwww.bing.com%252Fsearch%253Fq%253Dsuicidal%252Bthought%252Bfor%252Bvictims%252Bof%252Bnonconsensual%252Bpornography%2526src%253DIE-T> .

²³ Such recommendations were implemented by the Department of Justice as part of "Project Safe Childhood," warning adolescents, juveniles and their parents of the dangers of online child exploitation. <https://www.justice.gov/psc>

PRIOR DIVISION OF CRIMINAL JUSTICE TESTIMONY IN SUPPORT
OF S.B. 843 (2019) - AN ACT CONCERNING THE UNLAWFUL
DISSEMINATION OF INTIMATE IMAGES

(PROPOSING SAME CHANGES TO C.G.S. §53a-189(c) FOUND IN S.B. 5056)



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

**S.B. No. 843 (RAISED) AN ACT CONCERNING THE UNLAWFUL DISSEMINATION
OF INTIMATE IMAGES.**

JOINT COMMITTEE ON JUDICIARY
February 22, 2019

The Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE REPORT for S.B. No. 843, An Act Concerning the Unlawful Dissemination of Intimate Images. This bill is brought to the Committee as part of the Division's 2019 Legislative Recommendations. This bill provides a harsher, more appropriate felony classification for the dissemination via the internet or other electronic means of intimate images, a practice often described as "sextortion" or "sextortion."

The legislation was drafted in response to the prosecution in the Judicial District of Windham of a 27-year-old man who hacked into the cell phones and computers of more than 20 female victims starting in 2014. The defendant downloaded all of the pictures and contacts of the victims and also took control of several of their social media accounts. He would then contact the victims demanding nude photographs of them under the threat that he would disseminate the photos he had already hacked from their accounts. If they refused to comply, he would disseminate intimate pictures he had found on the victims' phones and computer accounts to all of their contacts, including family, school and business contacts. He also posted the photos and personal contact information for the victims on various "revenge porn" and "slut shaming" websites.

The defendant continued to victimize these women from 2014 until his arrest in 2018, reposting their pictures to websites as quickly as the victims could get them taken down. Many of the victims continue to be contacted by men who viewed their pictures on the various websites today, re-victimizing them every day. Many of the victims still suffer significant psychological harm because of the defendant's actions. This legislation had been discussed with the victims affected by these heinous criminal acts, and all support the proposed changes and respectfully ask this legislature to pass S.B. No. 843. Many of the victims wished to be here to speak to the Committee to present firsthand how these criminal acts affected them, but due to the short notice of the hearing and many of them now living out of state, they are unable to attend. In place of their testimony before this Committee, the Division will submit the transcript and audio

recording of their remarks made during the sentencing in court. As recounted in the transcript, these young women related stories of inconceivable victimization. Many left their school or jobs, moved out of the area or cut family ties because of the incident. They related how they lived in constant fear of being contacted by someone over the internet or recognizing them on the street because of their pictures being posted on these websites. One even stated she attempted suicide because of how this affected her. Their experiences provide strong reason for the enactment of S.B. No. 843 and the classification of this conduct as a felony offense.

As part of the agreement under which he pled guilty, the defendant submitted to a post-conviction interview and polygraph where he stated that he attempted to hack more than 70 accounts and phones of females he knew, accessing more than 40 accounts, and ultimately choosing the 20 victims. If not for the fact that several of these victims were under the age of 16 years old in the pictures disseminated, the state would have been limited to charging the defendant with a string of misdemeanor offenses not fully fitting the gravity of the harm caused to the victims. It was only because some of the victims were under age 16 at the time of the offenses that the state was able to invoke child pornography statutes and the associated felony classification and consequences.

The criminal acts C.G.S. Section 53a-189c sought to prevent at the time of the law's passage in 2015 have gone far beyond anything the legislature could have imagined. At the time, the legislature was concerned about an ex-partner posting a victim's picture online to a "revenge porn" site. As demonstrated by the recent Windham case, this crime has progressed beyond an ex-partner's "revenge" and has escalated to "sexploitation" or "sextortion" of victims by hackers or other offenders on social media platforms either downloading intimate images of the victim without their permission or obtaining these pictures by false pretenses from victims who believe these images will not be disseminated, and then exploiting them either personally or financially. The Division of Criminal Justice is aware of several other cases recently that have included threats of disseminating intimate images of the victim in an attempt to coerce the victim into sexual intercourse.

As recognized by the Department of Justice in its 2016 report to Congress "The National Strategy for Child Exploitation Prevention and Interdiction," crimes of "sexploitation" or "sextortion" involving the illegal dissemination of intimate images constitute "by far the most significantly growing threat" regarding victimization of teenagers. This report found that it is common for investigations to reveal that a single "sextortion" offender has been communicating with multiple potential victims, as demonstrated by the recent Windham case. By changing this law, it now puts the punishment on par with other similar crimes, including Computer Crime in Third Degree (C.G.S. Section 53a-254), Possession of Child Pornography in the Third Degree (C.G.S. Section 53a-196f), Identity Theft in the Third Degree (C.G.S. Section 53a-129d) and Trafficking Personal Information (C.G.S. Section 53a-129e). These crimes recognize that once a photo or personal information is on the internet, nothing can be done to remove it completely. It is there for anyone to see, and, like child pornography, results in the constant re-victimization of the victim. Recognizing the significant harm such criminal acts cause, more than 38 other states have passed or revised their statutes since 2015, making unlawful dissemination of intimate images a felony offense. This legislation would put Connecticut on the same level as these other states.

As Attorney General William Tong stated when he first proposed C.G.S. Section 53a-189c as a member of the Judiciary Committee in 2015, the punishment for this act must be commensurate with the gravity of harm the act caused. Increasing the punishment for this offense from a class A misdemeanor to a class D felony accurately reflects the continuing serious emotional and personal harm such acts can cause.

The Division has reviewed the testimony being submitted today by the Connecticut Sentencing Commission concerning section 1(a) of the bill. The Division supports the position of the Sentencing Commission with regard to the language and would be happy to work with the Sentencing Commission and the Committee on any substitute language for S.B. No. 843 as now drafted to incorporate the Sentencing Commission language with the enhanced penalties now included in S.B. No. 843. The Division reiterates in the strongest of terms our support for the felony penalty even though the Sentencing Commission has taken no position on that aspect of the bill.

In conclusion, the Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE REPORT for S.B. No. 843, or, should the Sentencing Commission language be preferred, the Committee's JOINT FAVORABLE SUBSTITUTE REPORT incorporating the changes suggested to section 1(a) along with the enhanced penalties of the current version of the bill. We thank the Committee for affording this opportunity to provide input on this matter and would be happy to provide any additional information the Committee might require or to answer any questions that you might have.