



## *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.<sup>1</sup> 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.<sup>2</sup> 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.” Vermont statutes state, if a person “knowingly discloses a visual image of an identifiable person who is nude or who is engaged in sexual conduct, without his or her consent, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted, and the disclosure would cause a reasonable person to suffer harm,” they can be imprisoned at for a maximum of two years or fined at most \$2,000.<sup>3</sup> Intent to disclose for profit is punishable by imprisonment for a maximum of five years, a maximum fine of \$10,000, or both.<sup>4</sup> If a person has an online site of any kind, they cannot ask for or receive a fee to remove, delete, or refrain from posting a visual image of someone engaging in sexual conduct.<sup>5</sup>

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<sup>1</sup> 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>.

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

<sup>3</sup> 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>

<sup>4</sup> State of Vermont, 13 V.S.A. § 2606.

<sup>5</sup> 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.<sup>6</sup> A trial court initially sided with VanBuren, calling the statute unconstitutional on First Amendment grounds which prompted the appeal to the Vermont Supreme Court.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> There has already been one other case to use the VanBuren trial as precedent.<sup>10</sup>

## 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]hoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstance would have a reasonable expectation of privacy... and without that person's knowledge and consent,” will be subject to imprisonment for a maximum of 2.5 years in the house of correction, a fine of at most \$5,000, or both.<sup>11</sup> The same penalty applies to the photography or videotaping of “sexual or other intimate parts of a person under or around the person's clothing to view or attempt to view the person's sexual or other intimate parts when a reasonable person would believe that the person's sexual or other intimate parts would not be visible to the public and without the person's knowledge and consent.”<sup>12</sup> When this crime is committed against a minor it carries a stronger penalty of up to five years imprisonment in a state prison, a \$10,000 fine, or both.<sup>13</sup> For the dissemination of the pornographic material obtained as described above, there is a penalty of “imprisonment in the house of correction for not more than 2 1/2 years or in the state prison for not more than 5 years or by a fine of not more than \$10,000, or by both such fine and

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<sup>6</sup> Iris Lewis, “First test of revenge porn law results in high court dismissal,” vtdigger.org, June 11, 2019, <https://vtdigger.org/2019/06/11/first-test-revenge-porn-law-results-high-court-dismissal/>.

<sup>7</sup> Iris Lewis, “First test of revenge porn law results in high court dismissal.”

<sup>8</sup> Iris Lewis, “First test of revenge porn law results in high court dismissal.”

<sup>9</sup> *State v. VanBuren*, 2018 VT 95, 214 A.3d 791. (No. 2016-253), 2016 WL 6851279.

<sup>10</sup> Iris Lewis, “First test of revenge porn law results in high court dismissal.”

<sup>11</sup> 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/Title/Chapter272/Section105>.

<sup>12</sup> Mass. Gen. Laws 272 § 105.

<sup>13</sup> Mass. Gen. Laws 272 § 105.

imprisonment.”<sup>14</sup> 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.”<sup>15</sup>

## **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.<sup>16</sup> 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.<sup>17</sup> 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.”<sup>18</sup> 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.”<sup>19</sup> The commission of this crime is considered a Class 5 felony (punishable with up to two years),<sup>20</sup> a class 4 felony if the image is disclosed electronically (punishable with up to three years),<sup>21</sup> or a class 1 misdemeanor if the person threatens to disclose but does not actually disclose an image<sup>22</sup> (punishable with up to six months).<sup>23</sup>

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<sup>14</sup> Mass. Gen. Laws 272 § 105.

<sup>15</sup> Mass. Gen. Laws 272 § 105.

<sup>16</sup> 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>.

<sup>17</sup> S.C. Code §16-15-305.

<sup>18</sup> 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>.

<sup>19</sup> ARS § 13-1425.

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

<sup>21</sup> ARS § 13-702.

<sup>22</sup> ARS § 13-1425.

<sup>23</sup> 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.<sup>24</sup> The proposed bill in California, for example, aimed to tax the porn industry 25 percent on the sale of porn films and on porn studio's profits. According to NPR, the taxation would have gone to a special fund to offset costs that result from "criminal activity surrounding adult entertainment venues like strip bars and arcades."<sup>25</sup> California Republicans opposed the tax (and all tax increases that year), claiming the porn industry tax on "a disfavored group of retailers" seemed unfair and in violation the First Amendment.<sup>26</sup>

### Utah

In 2004 Utah passed a law that taxes sexually explicit business and escort services at 10%. The revenue goes to various treatment programs and task forces to deal with sex offenders. For sexually explicit businesses the tax is included in admission fees, user fees, retail sales, and food and drink.<sup>27</sup> So far, Utah is the only state to have passed a higher tax on pornography and adult entertainment. In 2009, in the case of *Buschco v. Utah State Tax Com'n*, a group of escort service agencies and erotic dancing clubs challenged the tax as a violation of their First Amendment rights, and said the law was overbroad. The court ruled that it did not violate any of their rights as the government had legitimate interest in providing treatment for sex offenders, and that taxing is constitutional.<sup>28</sup>

### Removal of Revenge Porn and Nonconsensual Pornography

There are a variety of ways in which states provide relief and removal of pornography through their legislation. Many states provide injunctive relief as part of their revenge porn legislation, including but not limited to: Florida,<sup>29</sup> Minnesota,<sup>30</sup> and Ohio.<sup>31</sup> Several states, such as New

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<sup>24</sup> Office of Legislative Research, Objective Research for Connecticut's Legislature, "Tax on Sexually Explicit Material," December 20, 2004,

<https://www.cga.ct.gov/2004/rpt/2004-R-0948.htm>.

<sup>25</sup> Tamara Keith, "Calif. Lawmaker Proposes Taxing the Sex Industry," National Public Radio, June 6, 2008, <https://www.npr.org/templates/story/story.php?storyId=91247173>.

<sup>26</sup> National Public Radio, "Calif. Lawmaker Proposes Taxing the Sex Industry,"

<sup>27</sup> State of Utah, Tax imposed on a sexually explicit business -- Tax imposed on an escort service., Utah Code Ann §59-26-103 (2004). [https://le.utah.gov/xcode/Title59/Chapter26/C59-26-S103\\_1800010118000101.pdf](https://le.utah.gov/xcode/Title59/Chapter26/C59-26-S103_1800010118000101.pdf)

<sup>28</sup> *Buschco v. Utah State Tax Com'n*, 225 P.3d 153, 2009 UT 73 (Utah 2010).

<sup>29</sup> State of Florida, Sexual cyberharassment, Fla. Stat § 784.049 (2022).

[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0700-0799/0784/Sections/0784.049.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0784/Sections/0784.049.html)

<sup>30</sup> State of Minnesota, Nonconsensual dissemination of private sexual images, Minn. Stat. § 617.261(2022).

<https://www.revisor.mn.gov/statutes/cite/617.261>

<sup>31</sup> State of Ohio, Civil action for dissemination of images, Ohio Rev. Code Ann. § 2307.66 (2019).

<https://codes.ohio.gov/ohio-revised-code/section-2307.66>

York,<sup>32</sup> North Carolina,<sup>33</sup> Indiana,<sup>34</sup> and Pennsylvania,<sup>35</sup> grant civil cause of action through their legislation. Colorado<sup>36</sup> and Vermont<sup>37</sup> provide both injunctive relief and private right of action, which allows victims to sue in court.<sup>38</sup> Colorado additionally gives authorship access to victims, allowing them to take down images through copyright claims.<sup>39</sup>

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.<sup>40</sup> Courts in Hawaii,<sup>41</sup> New York,<sup>42</sup> North Carolina,<sup>43</sup> and Oklahoma<sup>44</sup> can order the destruction and removal from distribution of all images and recordings found in violation of the Violence Against Women Act.

Due to the frequency of distribution on third party platforms, most states with revenge porn laws specifically exempt platforms from liability.<sup>45</sup> Exemptions can be found within Kentucky,<sup>46</sup> Rhode Island,<sup>47</sup> and Vermont<sup>48</sup> which require that the requested removal of nonconsensual pornographic images must be made with no exchange of value. An exception can also be found

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<sup>32</sup> State of New York, Unlawful dissemination or publication of an intimate image, N.Y. Laws § 245.15 (2023). <https://www.nysenate.gov/legislation/laws/PEN/245.15>

<sup>33</sup> State of North Carolina, Disclosure of private images; civil action, N.C. Gen. Stat. § 14-190.5A (2020). [https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_14/GS\\_14-190.5.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-190.5.pdf)

<sup>34</sup> State of Indiana, Causes of action: nonconsensual pornography, Ind. Code § 34-21.5 (2019). <https://iga.in.gov/laws/2022/ic/titles/34#34-21.5>

<sup>35</sup> State of Pennsylvania, Damages in actions for unlawful dissemination of intimate image, 18 Pa. Cons. Stat. § 8316.1 (2014). <https://www.legis.state.pa.us/CFDOCS/LEGIS/LI/consCheck.cfm?txtType=HTM&ttl=42&div=00.&chpt=083.&sectn=016.&subSctn=001>

<sup>36</sup> 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>

<sup>37</sup> 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>

<sup>38</sup> U.S. Congress, House, Violence Against Women Act Reauthorization Act of 2022, HR 2471, 117<sup>th</sup> Cong., 2<sup>nd</sup> Sess., introduced in House April 13th, 2021, <https://www.congress.gov/117/bills/hr2471/BILLS-117hr2471enr.pdf>.

<sup>39</sup> C.R.S. § 18-7-107 (2014).

<sup>40</sup> Victoria L. Killion, Federal Civil Action for Disclosure of Intimate Images: Free Speech Considerations, Congressional Research Service, 2022, <https://crsreports.congress.gov/product/pdf/LSB/LSB10723>.

<sup>41</sup> State of Hawaii, Violation of privacy in the first degree, Haw. Rev. Stat. § 711-1110.9 (2022).

[https://www.capitol.hawaii.gov/hrscurrent/vol14\\_ch0701-0853/HRS0711/HRS\\_0711-1110\\_0009.htm](https://www.capitol.hawaii.gov/hrscurrent/vol14_ch0701-0853/HRS0711/HRS_0711-1110_0009.htm)

<sup>42</sup> State of New York, Private right of action for unlawful dissemination or publication of an intimate image, N.Y. Laws § 52-B (2019). <https://www.nysenate.gov/legislation/laws/CVR/52-B>

<sup>43</sup> N.C. Gen. Stat. § 14-190.5A (2020).

<sup>44</sup> State of Oklahoma, Nonconsensual dissemination of sexual images, Okla. Stat. tit. 21 § 1040.13b (2019). <https://oksenate.gov/sites/default/files/2019-12/os21.pdf>

<sup>45</sup> Electronic Privacy Information Center, “State Revenge Porn Policy,” accessed October 25, 2023 <https://epic.org/state-revenge-porn-policy/>.

<sup>46</sup> State of Kentucky, Distribution of sexually explicit images without consent, Ky. Rev. Stat. § 531.120 (2018). <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=47656>

<sup>47</sup> State of Rhode Island, Unauthorized dissemination of indecent material, R.I. Gen. Laws § 11-64-3 (2022). <http://webserver.rilin.state.ri.us/Statutes/TITLE11/11-64/11-64-3.HTM>

<sup>48</sup> 13 V.S.A. § 2606 (2020).

in Georgia,<sup>49</sup> 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 Kentucky<sup>50</sup> and Washington,<sup>51</sup> specifically exempt internet service providers as to not violate 47 U.S. Code § 230.<sup>52</sup>

### **Revenge Porn Restorative Justice**

Restorative justice focuses on repairing the harm caused to the community from the crime instead of punishing the offender.<sup>53</sup> Restorative justice programs throughout the United States are used mostly for juveniles, but expansion of these programs to apply to adults has occurred in recent years.<sup>54</sup> Due to the recency of revenge porn and restorative justice legislation, there has been no legal specification of participation in restorative justice programs for perpetrators of revenge porn.

#### **Vermont**

Restorative justice laws in Vermont can be found under Title 28, Statute 2a, in which qualification is based upon a case-by-case basis.<sup>55</sup> A new law, Act 11, allows victims of sexual and domestic violence seeking a restorative justice solution to take their case to a community justice center, instead of through the criminal justice system.<sup>56</sup> Guidelines for this system will be created on or before July 24th, 2023, in collaboration with Community Justice Unit of the Office of the Attorney General, the Vermont Network, and the Center for Crime Victim Services.<sup>57</sup> The law notably excludes victims of stalking from taking this approach.

#### **Massachusetts**

Restorative justice laws in Massachusetts can be found in Section 276B. Massachusetts defines restorative justice programs as “voluntary programs that engages parties to a crime or members of the community in order to develop a plan of repair that addresses the needs of the parties and

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<sup>49</sup> State of Georgia, Prohibition on Nude or Sexually Explicit Electronic Transmissions, O.C.G.A. § 16-11-90 (2022). <https://www.legis.ga.gov/api/legislation/document/20132014/143392>

<sup>50</sup> Ky. Rev. Stat. § 531.120 (2018).

<sup>51</sup> State of Washington, Disclosing intimate images, RCW § 9A.86.010 (2021). <https://app.leg.wa.gov/RCW/default.aspx?cite=9A.86.010>

<sup>52</sup> Protection for private blocking and screening of offensive material, 47 U.S.C. § 230 (2018).

<sup>53</sup> Howard Zehr, *Little Book of Restorative Justice* (New York: Good Books, 2015).

<sup>54</sup> Office of Juvenile Justice and Delinquency Prevention, “Restorative Justice Literature Review,” 2010, [https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/restorative\\_justice.pdf](https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/restorative_justice.pdf).

<sup>55</sup> State of Vermont, Restorative justice, 28 V.S.A. § 2a (2011).

<https://legislature.vermont.gov/statutes/section/28/001/00002a>

<sup>56</sup> Grace Sherwood, “New Law Lets Sexual and Domestic Violence Cases Go to Community Justice Centers,” Vermontbiz, July 29, 2023,

<https://vermontbiz.com/news/2023/july/29/new-law-lets-sexual-and-domestic-violence-cases-go-community-justice-centers>.

<sup>57</sup> State of Vermont, An act relating to referral of domestic and sexual violence cases to community justice centers, H.41, 2023-2024 Sess. § 41 (VT 2023).

<https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT011/ACT011%20As%20Enacted.pdf>

the community.”<sup>58</sup> 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.”<sup>59</sup> Since Massachusetts does not have a definitive revenge porn law, with cases instead covered under other pornographic regulation laws,<sup>60</sup> 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.<sup>61</sup>

## **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.<sup>62</sup> 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.<sup>63</sup> Since Colorado Statute 18-7-107, the statute on revenge porn, defines the statute pertaining to two parties over the age of eighteen,<sup>64</sup> 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.<sup>65</sup> 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

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

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

<sup>59</sup> Mass. Gen. Laws 276B § 3.

<sup>60</sup> 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>

<sup>61</sup> 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>

<sup>62</sup> 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>

<sup>63</sup> C.R.S. § 18-1.3-104 (2020).

<sup>64</sup> 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>

<sup>65</sup> State of California, An act to add Section 1708.86 to the Civil Code, relating to privacy, AB602 (2019),

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=20210220AB602](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20210220AB602).

giving a performance they did not actually perform or to be performing in an altered depiction.”<sup>66</sup> An altered depiction is defined as “a performance that was actually performed by the depicted individual but was subsequently altered to be in violation of this section.”<sup>67</sup> According to this section of the Civil Code it is illegal if someone “creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation or disclosure,” or “[i]ntentionally discloses sexually explicit material that the person did not create and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material.”<sup>68</sup> Violation of this section can be punished by one of several ways including “[a] sum of not less than one thousand five hundred dollars (\$1,500) but not more than thirty thousand dollars (\$30,000),” or if the act was committed with malice, “the award of statutory damages may be increased to a maximum of one hundred fifty thousand dollars (\$150,000).”<sup>69</sup> For more information pertaining to victim compensation and emotional damages please see Section 1708.86 in its entirety.

## **New York**

New York has passed new legislation as recent as October 2, 2023, pertaining to the nonconsensual dissemination of deepfakes. The governor signed Bill S1042A into law, making it illegal to “disseminate AI-generated explicit images or “deepfakes” of a person without their consent.”<sup>70</sup> Violation of the new law could result in up to a year in jail and a fine of \$1,000.<sup>71</sup>

## **Virginia**

Virginia passed legislation in 2019 that makes it illegal to “with the intent to coerce, harass, or intimidate, maliciously [disseminate] or [sell] any videographic or still image created by any means whatsoever that depicts another person who is totally nude, or in a state of... where such person knows or has reason to know that he is not licensed or authorized to disseminate or sell such videographic or still image.”<sup>72</sup> The law also specifies that “‘another person’ includes a person whose image was used in creating, adapting, or modifying a videographic or still image with the intent to depict an actual person and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic.”<sup>73</sup> Violation of this law is

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<sup>66</sup> State of California, Depiction of individual using digital or electronic technology: sexually explicit material: cause of action., Cal. Civ. Code § 1708.86 (2019), [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1708.86](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1708.86).

<sup>67</sup> Cal. Civ. Code § 1708.86.

<sup>68</sup> Cal. Civ. Code § 1708.86.

<sup>69</sup> Cal. Civ. Code § 1708.86.

<sup>70</sup> Michelle Hinchey, “Hinchey Bill to Ban Non-Consensual Deepfake Images Signed into Law,” nysenate.gov Press Release, October 2, 2023, <https://www.nysenate.gov/newsroom/press-releases/2023/michelle-hinchey/hinchey-bill-ban-non-consensual-deepfake-images>.

<sup>71</sup> Michelle Hinchey, “Hinchey Bill to Ban Non-Consensual Deepfake Images Signed into Law.”

<sup>72</sup> State of Virginia, Unlawful dissemination or sale of images of another; penalty., Va Code Ann. § 18.2-386.2., (2019), <https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-386.2/>.

<sup>73</sup> Va Code Ann., § 18.2-386.2.

considered a Class 1 misdemeanor making it punishable by up to one year in jail, a maximum fine of \$2,500, or both.<sup>74</sup>

### **Conclusion**

Laws on revenge porn vary from state to state, but there are several different ways that victims can get their photos removed from the internet. Some ways include copyright claims, private right of action, injunctive relief, and civil cause of action. Additionally, there are no restorative justice programs set up specifically for perpetrators of revenge porn. Higher taxation on adult entertainment products has been proposed in some states but Utah is the only state to have successfully passed it. The recent usage of deepfake imagery has forced some states to widen their laws on revenge porn to include explicit likenesses made with artificial intelligence.

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This report was completed on November 27, 2023 by Fi Barthel, Eva Sanford, and Petra Waterstreet under the supervision of VLRS Director, Professor Anthony “Jack” Gierzynski, in response to a request from Representative Tristan Roberts.

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<sup>74</sup> State of Virginia, Punishment for conviction of misdemeanor., Va Code Ann. § 18.2-11., (2000), <https://law.lis.virginia.gov/vacode/title18.2/chapter1/section18.2-11/>.