

2015 SENATE JUDICIARY

SB 2357

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2357
2/3/2015
23068

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will open the hearing on SB 2357.

Sen. Mac Schneider: Sponsor, support (see attached 1).

Sen. Luick: Are there lots of problems in ND.

Sen. Schneider: This is happening. Unfortunately, this is more and more a part of the way courtship is done amongst young people. To think that these pictures never get out there is just closing our eyes.

Sen. Grabinger: Are there laws in place right now to handle this issue; what are the penalties if a person is convicted. I don't know what the law is now.

Sen. Schneider: I had Legislative Council research that, to determine whether this activity is illegal under ND right now, and the answer is "no"; at least where these intimate images were received voluntarily. NDCC 12.1-27.1-03.3, outlaws the creation, possession, or dissemination of sexually expressive images; however, it requires that those images be surreptitiously created. There is nothing surreptitious about taking a racy selfie, and sending it to your then boyfriend. This section of the code would not outlaw that kind of behavior. There is also surreptitious intrusion that's 12.1-20-12-02, that is more of a peeping tom statute. That wouldn't cover this kind of behavior where someone voluntarily sends a racy selfie and that selfie is distributed by an ex-boyfriend or ex-girlfriend through the internet.

Sen. Grabinger: So we have more work to do beyond this. This allows for a civil case.

Sen. Schneider: This would criminalize distribution of intimate images punishable as a class A misdemeanor and it would also provide for a civil remedy, regardless of whether there was a criminal prosecution.

Sen. Casper: To be clear, we are criminalizing the resender.

Sen. Schneider: That is correct.

Sen. Casper: Not the passive recipient.

Sen. Schneider: It could be the recipient as well. It does clearly state that the distribution of intimate images is what is punishable here.

Sen. Nelson: You're saying distribution but that could be the recipient or a third party.

Sen. Schneider: If you are the recipient and you then distribute it, potentially criminal liability could adhere.

Sen. Nelson: Don't you think that is most of the cases.

Sen. Schneider: I would guess in more cases than not, when this picture is sent to one person it is then resent again, yes.

Sen. Nelson: You said 18 or older. Do we have something in statute? I know people send baby pictures. When does it become a problem?

Sen. Schneider: That really is a question that is dealt with under our statutes, criminalizing child pornography right now. This applies to those individuals 18 years or older because if you're doing this now with someone who is 17 or younger, then you are disseminating child pornography. Law enforcement is pretty well trained to know the difference baby pictures taken by parents and child pornography.

Sen. Luick: If that picture was sent from the initial source to a girl (boy) friend and then they take it and exploit that picture; then there are others that exploit that picture, unknowingly are they also in violation.

Sen. Schneider: There may be a potential defense there depending on the facts. The three elements are: if the person knows that the depicted individual has not given consent to distribute the intimate image. If the intimate image

was created or provided to the person under circumstances in which the individual has a reasonable expectation of privacy. Potentially, you could see, depending on the facts of a case, either one of those elements not being met. If you are someone who has shown this picture, it's your roommate's ex-girlfriend, you absolutely know she didn't give permission to distribute that image, they know they shouldn't redistribute that image.

Sen. Luick: If there is a case where it was redistributed, there is some protection from that unknowing person in regard to that.

Sen. Schneider: I think, depending on the facts, there certainly would be.

Ch. Hogue: This looks like a uniform act or a model act, do you know where Legislative Council got this.

Sen. Schneider: I believe that the Legislative Council attorney that drafted this, worked from the Utah statute. I could be mistaken in that. I did attach to my testimony the NCSL spreadsheet on the other states that have outlawed this activity. Certainly there is a wide range of penalties and various approaches. I know that Arizona has been sued over their statute on revenge porn, so certainly something that we want to avoid here in ND. I think this is pretty narrowly tailored.

Sen. Armstrong: Sponsor, support. There is an intent portion of this statute, so it's not a strict liability crime. If you get something and you just send it back out, they are going to go after the guy who sent it, not the guy who redistributed it. The example of two roommates and they both know and the roommate is the one who does it, they are going to go after that guy too. If you're getting this 4th or 5th down the chain it's a different deal. There was a question about whether this happens in ND. I worked on a case where the girl was in a university (who took a naked picture of herself) and sent it to the boyfriend; now the ex-boyfriend took that picture and made 500-600 copies of that picture and he put it on every car in the dorm parking lot. He put it on every dorm room door in her dorm from the first floor to the sixth floor. He was never charged with a crime. I think he could have been charged with some other crimes, but currently the only crime on the books to deal with this, is disorderly conduct. The picture in and of itself, is not disorderly conduct. The dissemination, with the intent to harass, annoy or do something to another human being is disorderly conduct. I got involved in the case on a protection order standpoint. This young lady was absolutely devastated. This is where she lived. Even from a civil standpoint, we ended up filing a

domestic violence protection order. Quite honestly, that wasn't domestic violence. It is something else that is horrible, but it's not domestic violence and the sum total of the reason where we ended up getting a restraining order is because the dorm was locked down and he had to either break in or get in under false pretenses, which either way is essentially trespassing. That was the reason we ended up getting the protection order and I would say that just a civil restraining order, there was never a criminal charge. We got the restraining order against this guy and people need to realize that when this stuff happens, right now in ND there is very little law that deals with it. I'm always in favor of, when a person is that kind of jerk, criminalizing the conduct. Everyone should realize that sending these pictures, etc. can haunt you forever. This bill isn't over-criminalizing an offense; it leaves it at a misdemeanor level. It allows for the mechanisms, as well as some protection for the victims against a person who is doing something horrible to them.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2357
2/10/2015
23571

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: Let's take a look at SB 2357. What are the committee's wishes in regard to SB 2357.

Sen. Casper: I move a Do Pass on SB 2357.

Sen. Grabinger: Second the motion.

Ch. Hogue: I let this bill sit a little bit because it does contain a lot of new law; it had the markings of a uniform act or something that came from another jurisdiction, so I was going to see if we got any pushback from any interest groups, particularly the companies that would be affected, the hosting companies as this is defined or the internet service providers but I didn't receive anything. The civil remedy is fine.

Sen. Armstrong: When this was brought to me by the prime sponsor, I would go to page 2, lines 16-25. I think as it's written here, it wasn't quite the same as it was when we got it. It was bounced back and forth a couple of times to actually tighten up the intent part of it. It narrowed the focus. I guess whether we narrowed it enough will be determined at a later date, but we did really try to narrow it. The attempt is to make this specific to the bad actors and not to all the middlemen.

Sen. Casper: Can you clarify your concern on the providers, you thought we might get some pushback from them. My understanding is that it wasn't applicable, page 3, line 4.

Ch. Hogue: Yes.

Sen. Casper: It's really about the sender.

Ch. Hogue: Correct. They typically like to tweak definitions in statutes to make it as clear as possible. The clerk will take the roll call vote.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Casper

Date: 2/10/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2357

Senate _____ **JUDICIARY** _____ Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Casper Seconded By Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Casper

REPORT OF STANDING COMMITTEE

SB 2357: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2357 was placed on the
Eleventh order on the calendar.

2015 HOUSE JUDICIARY

SB 2357

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2357
3/17/2015
25031

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the distribution of graphic or intimate images of someone without consent; and to provide a penalty.

Minutes:

See Testimony #1

Chairman K. Koppelman: Opened the hearing on SB 2357.

Senator Schneider: Introduced the bill. (See Testimony #1) (:32-4:04)

Rep. L. Klemin: I am looking at the exceptions here on page 2. I don't want this bill to preclude that kind of evidence in that situation. Do we have an exception here?

Senator Schneider: This is best answered on page 2, line 30; court proceedings or any other judicial proceedings or any other judicial proceedings are explicitly spelled out there so this section would not apply to those. That would also cover divorce proceedings. These exceptions were provided to me by the national conference of state legislatures. This bill was based off Utah statutes that is working now. I do think we provide the proper exemption in this bill.

Rep. K. Wallman: Isn't ND a no fault state and it wouldn't apply here anyway, but at some point it might go a different way and it would be helpful to have this.

Senator Schneider: I have not practiced divorce law.

Rep. Mary Johnson: To Rep. Wallman's point I think it becomes applicable in situations of child custody.

Chairman K. Koppelman: I believe we have had with the internet we have had other bills on this topic. Are there laws that apply to this at all or similar situations and could you comment on that.

Senator Schneider: There is no law in point that prohibits the distribution of images that were voluntarily released to a person who is doing the distributing. There is a law on the

books that would prohibit the distribution of intimate images if someone is under the age of 18. This is where images were voluntarily given by the person to an ex-boyfriend or girlfriend.

Chairman K. Koppelman: What about someone doing this in a mass scale in a website where we couldn't get at these people with the websites because of some federal limitations. Do you see this getting at that at all or is this strictly a one on one.

Senator Schneider: It potentially could. An operator of a website would know consent was not given. There may be questions whether you could enforce this outside of ND borders.

Rep. L. Klemin: Where is the extortion part in this thing?

Senator Schneider: There is no extortion. Where it came into play was in the FOX news article that I attached to my testimony. It is an interesting read. This individual was trying to extort money to take the photo down. That is where extortion came into play.

Chairman K. Koppelman: On this article you mentioned there was a conviction after the article was published, but the article also talks about a conviction on it. Was there something additional?

Senator Schneider: Reading the second paragraph of that article he was convicted on identity thief and extortion. The jury was unable to reach verdicts on a couple of other charges including another count of identify thief and conspiracy. If you look down midway on the article this all happened before California's revenge law was on the books.

Rep. P. Anderson: So the extortion could the ex-boyfriend say you have to pay me thousands of dollars or I am going to put these out there?

Senator Schneider: That would be covered by existing statute.

Rep. K. Wallman: On page 2, subsection 2 the word person is used. We have had lots of discussion about person and individual. I am wondering if that means person in the legal sense in ND statute or is that person meaning an individual?

Senator Schneider: Person means lots of things under ND law.

Opposition: None

Neutral: None

Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2357
3/31/2015
25636

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Chairman K. Koppelman: Reopened the meeting on SB 2357. We had an email from Pat Ward representing the motion picture association and he visited with the Vice Chair and I yesterday he had a suggestion on page 2, line 17 we add the words within intent to harass, annoy or otherwise alarm. That is the description of this act and it reads a person commits the offense of distribution of intimate images if the person knowingly or intentionally distributes to any third party any intimate image of an individual 18 years of age or older. If that is all it read I might be able to see his request. But then it goes on to say if a the person knows that the depicted individual has not given consent to the person who distributed the intimate image d the intimate image was created by or provided to the person under circumstances in which the individual has a reasonable expectation of privacy and c. actual emotional distress or harm is caused to the individual as a result of the distribution under this section. My personal opinion is that those modifiers are enough to insulate people from doing this. If you add the language there that requires the proof of ill intent then you are shifting the burden to the victim and I don't see that as right. My person opinion is that those modifiers are enough.

Rep. K. Wallman: I agree. I think that amendment is redundant.

Chairman K. Koppelman: After discussing that then he asked if we would consider putting it on page 4, line 9. I think it is up to the committee what we want to do. That is the area that deals with civil action. The other area he talked about was criminal. Basically this would be for law suits.

Rep. P. Anderson: I wrote down this is a model bill and 13 states have already passed it from the National Conference of State Legislators. I think we should leave it alone.

Rep. Lois Delmore: I think the bill is pretty clear without that amendment.

Chairman K. Koppelman: In Senator Schneider's testimony here NCSL reported 13 states have passed that. NCSL normally does not do model legislation, but they do keep tabs on what is going on around the states. If no one makes the motion we will leave it like it is.

House Judiciary Committee
SB 2357
March 31, 2015
Page 2

Rep. L. Klemin: The language in page 2, subsection 2 takes care of all of this. The burden of proof is going to be on the plaintiff in a civil action to provide all of these things including no consent and the other person knew there was no consent and actual emotional harm resulted.

Do Pass Motion Made by Rep. Maragos; Seconded by Rep. Lois Delmore

Discussion: None

Roll Call Vote: 13 Yes 0 No 0 Absent Carriers: Rep. K. Wallman:

Date: 3-31-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2357

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Wallman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2357: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2357 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

SB 2357

#1-1
2-3-15

TESTIMONY OF SENATOR MAC SCHNEIDER (DISTRICT 42 - GRAND FORKS)

SENATE BILL 2357

SENATE JUDICIARY COMMITTEE - FEBRUARY 2, 2015

Mr. Chairman and members of the committee, my name is Mac Schneider and I represent Grand Forks' District 42 in the North Dakota Senate. I am the prime sponsor of SB 2357, legislation which would outlaw so-called "revenge porn" in North Dakota.

The concept of revenge porn is probably best described by an example: A college-age woman is asked by her college-age boyfriend to send racy pictures of herself to the boyfriend via text. She complies because she is in love with him and trusts that he will not share the intimate pictures with anyone else. Two months later, he breaks up with the woman and, out of spite, publishes the photos to the Internet and shares them with the entirety of his fraternity via text. The images quickly go viral around campus. The young woman's privacy is violated and her reputation is harmed, causing her serious emotional distress. Because the ex-boyfriend obtained the pictures consensually, the distribution of the images of the adult woman is presently not a crime under North Dakota law.

Somewhat sickeningly, a cottage industry has developed around revenge porn. The attached article from the North Dakota State University student newspaper, The Spectrum, discusses the now-defunct website www.isanyoneup.com, which served as a depository for intimate images "distributed by angry ex-lovers." Before it was shut down in April of 2012, the site gained roughly three hundred to three hundred and fifty thousand visitors a day.

As one can imagine, this very public release of intimate images can be devastating. The attached Associated Press article recounts the testimony of a victim given at a recent trial of a purveyor of revenge porn. "I lost my family. They think that I brought shame on them. My reputation is ruined."

SB 2357 seeks to address the issue by outlawing "distribution of intimate images." A person commits this offense where he or she "knowingly or intentionally distributes to any third party any intimate image of an individual 18 years old or older" if 1) "[t]he person knows that the depicted individual has not given consent to the person to distribute the image;" 2) [t]he intimate image was created by or provided to the person under circumstances in which the individual has a

reasonable expectation of privacy;" and 3) "[a]ctual emotional distress or harm is caused to the individual as a result of the distribution[.]"

Importantly, line 26 on page 2 through line 2 on page 4 provides exemptions for law enforcement, prosecutors, those who report criminal offenses, court proceedings, medical procedures, and intimate images that are voluntarily exposed or portrayed in a lawful commercial setting. The bill also carves out exemptions for service providers, including providers of internet, telecommunications, and cable services.

Finally, section 2 of the bill allows for a private right of action (i.e., a civil remedy) against anyone violating the provisions of section 1 of the bill.

Because of the damage a release of intimate images can have on people's lives, at least 13 states have outlawed revenge porn since 2013. I am hopeful that North Dakota will join this group.

Thank you, Mr. Chairman. I would be happy to answer any questions.

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Arts & Entertainment — January 29, 2014 at 12:00 am

'Revenge Porn' Site Founder in FBI Custody

'Most hated man on the internet' finally arrested

by **Steven Strom**

Normally, when one writes for Arts and Entertainment, the entertainment is intentional. I doubt that was the case when the FBI finally arrested Hunter Moore-the vile, despicable and many other adjectives my editors probably wouldn't like me to use-owner and operator of isanyoneup.com.

I am going to chock this one up as entertainment nonetheless. It certainly entertained me.

"Is Anyone Up?" is what's known as a revenge porn site – the biggest such website, in fact – a "service" that allows the lifeless and disgusting to post nude or compromising pictures of people (usually women) for public, nonconsensual perusal. Such interactions often include personal details about the victims, including names, phone numbers, addresses, email accounts, etc.

Needless to say, this often leads to terrible ends. Victims who have their photos distributed (again, without their consent) can find themselves fired, abused and digitally and physically stalked. It's even directly led to several cases of suicide.

Not that Moore cares, or did care. Before his arrest, he described himself as a "professional life ruiner." He is on record as insulting and berating any victim that asks for their picture to be pulled down in accordance with the law. He's even made death threats to those that accuse and report on him.

Despite his public villainy, it's been notoriously hard for victims and their supporters to go against him. United States law enforcement, historically, is laughable in this regard. Victims are blamed; men and women alike in positions of law brush off and ignore the events as either the victim's fault or "no big deal."

Few examples underscore this better than the fantastic article by Charlotte Laws, the author, former private investigator, talk show host, activist and mother that spearheaded the FBI investigation against Moore, which you can read on Jezebel.com.

Moore won't be the only one to go down for the crimes. The photos used on "Is Anyone Up?" did not only include images stolen or distributed by angry ex-lovers. Many were outright stolen from victims' computers and phones through the hacking efforts of Moore's partner, Charlie Evans.

Together, the two (now in FBI custody) have been charged with "conspiracy, seven counts of unauthorized access to a protected computer to obtain information and seven counts of aggravated identity theft."

Previously, the operators of "Is Anyone Up?" have been able to get away with their crimes on fear – the fear those struck felt of having their identities forever associated with the very photos they wanted kept private, and fear of the roughly \$60,000 cost of civil lawsuits.

Because of new state laws regarding "revenge porn" and the highly illegal nature of hacking into someone's private computer (not to mention the tireless work of Laws, and activist hacking group Anonymous) the government has finally gotten involved.

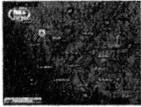
Moore's very public, very damning comments, death threats, insults and net-based aggression towards those involved (including a field for adding someone's home address to their photo on his site) it's going to be very difficult for his attorneys to make a defense.

And so, justice prevails at least this one time in the world of sexual harassment and privacy invasion. Hurray!

For a much longer, more in-depth explanation of the events leading up to the arrests, check out <http://bit.ly/1atjTIs>

SB 2357
2/3/15

1-4



21°

Clear
Gadsden

FULL FORECAST

Revenge-porn website operator convicted in San Diego

SAN DIEGO (AP) - A San Diego man charged with running a so-called revenge porn website where people posted nude pictures of their ex-lovers - and then charging the victims to take down the images - was convicted Monday of 27 felony charges.

Kevin Bollaert, 28, was found guilty Monday of identity theft and extortion. He faces up to 20 years in prison.

The San Diego County Superior Court jury was unable to reach verdicts on two charges of identity theft and conspiracy and a judge declared a mistrial on the counts.

It was believed to be the first conviction of a revenge porn website operator, although two months a Los Angeles man who posted a topless photo of his ex-girlfriend on Facebook was sentenced to a year in jail for violating California's new revenge porn law.

That law wasn't used against Bollaert.

The term revenge porn is used because most of the explicit images have been posted online by former lovers in attempts to shame their former partners after a breakup.

Prosecutors said that in 2012 and 2013, Bollaert allowed people to anonymously post more than 10,000 images, mainly of women, on his now-defunct ugotposted.com website without the knowledge of those in the pictures. The victims' names, cities where they lived and other information such as links to their Facebook profiles also were posted, authorities alleged.

Bollaert also ran another now-defunct website, changemyreputation.com, where victims could go and be charged up to \$350 to have the images removed.

Prosecutors said he earned tens of thousands of dollars from the scheme.

More than two dozen people were named as victims in the criminal complaint. Some testified at trial that they suffered humiliation and fear when their private photos were posted and prosecutor Tawnya Austin told jurors that they also were harassed by people who tried to contact them through Facebook or by email.

"It ruined my life and I'm still going through it," testified one woman, who said she was thrown out of her home after her nude photos were posted. "I lost my family. They think that I brought shame on them. My reputation is ruined."

At trial, prosecutors argued that Bollaert knew the images on his website were private and posted without consent of the victims, and described the business as essentially a blackmail scheme.

Bollaert's lawyer, Emily Rose-Weber, argued in court that her client may have conducted an immoral business that took advantage of "human weakness" but he didn't break the law by allowing others to post the explicit photos.

"It's gross, it's offensive, but it's not illegal," she said.

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SB 2357
2/3/15



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

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Enacted State Legislation Related to "Revenge Porn"

As of Jan. 13, 2015

'Revenge porn' is the dissemination of sexually explicit photographs or videos of individuals online without their consent, even if the photograph or video itself was taken *with consent*. Websites created specifically for this type of pornography sometimes include a victim's name, address and links to social media profiles with the images, and some websites charge a fee to have the materials removed.

In 2014, bills addressing revenge porn were considered in at least 27 states, the District of Columbia and Puerto Rico.

Since 2013, at least 13 states have enacted revenge porn laws, as follows.

State "Revenge Porn" Legislation Enacted Since 2013* and Penalties

State	Year Passed/Bill No./Session Law	Penalty
Arizona	2014 H.B. 2515, Chap. 268	Class 5 felony, or a class 4 felony if the depicted person is recognizable. Classifies a violation of the offense as domestic violence, if relationship conditions are met.
California	2013 S.B. 255, Chap. 466	Misdemeanor (disorderly conduct). (1) A first violation is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both fine and imprisonment, and (2) A second or subsequent violation or any violation of that offense in which the victim was, at the time of the offense, a minor, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$2,000, or by both that fine and imprisonment.
	2014 S.B. 1255, Chap. 863	Misdemeanor (see above).
	2014 A.B. 2643, Chap. 859	Creates a private right of action.
Colorado	2014 H.B. 1378, Chap. 283	Misdemeanor; fine up to \$10,000. Creates private right of action; provides for greater of \$10,000 or actual damages, exemplary damages and reasonable attorneys fees.
Delaware	2014 H.B. 260, Chap. 415	Class B misdemeanor When aggravated, a class G felony.

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Georgia	2014	H.B. 838, Act 519	Misdemeanor of a high and aggravated nature; Second or subsequent violation: felony to be punished by imprisonment of not less than one nor more than five years, a fine of not more than \$100,000, or both.
Hawaii	2014	H.B. 1750, Act 116	Class C felony. Court also may order the destruction of any recording made in violation of this section.
Idaho	2014	H.B. 563, Chap. 173	Felony.
Illinois	2014	S.B. 1009, Public Act <u>98-1138</u>	Class 4 felony. A person convicted under this section is subject to forfeiture provisions.
Maryland	2014	H.B. 43, Chap. 583	Misdemeanor, subject to imprisonment not to exceed 2 years or a fine not exceeding \$5,000 or both.
Pennsylvania	2014	H.B. 2107, <u>Act 115</u>	1) Misdemeanor of the first degree, when the person depicted is a minor. (2) Misdemeanor of the second degree, when the person depicted is not a minor. Creates a private right of action. Provides for (1) Actual damages arising from the incident or \$500, whichever is greater. The court may award up to three times the actual damages sustained, but not less than \$500, (2) reasonable attorney fees and court costs, and (3) additional relief the court deems necessary and proper.
Utah	2014	H.B. 71, Chap. 124	
Virginia	2014	H.B. 326, Chap. 399	Class 1 misdemeanor.
Wisconsin	2014	S.B. 367, Act 243	

* Three states' laws enacted prior to 2013 also could apply to revenge porn (*see*: Citron, Danielle Keats and Franks, Mary Anne, Criminalizing Revenge Porn (May 19, 2014). Wake Forest Law Review, Vol. 49, 2014, p. 345+; U of Maryland Legal Studies Research Paper No. 2014-1. Available at SSRN <http://ssrn.com/abstract=2368946>).

- Alaska Stat. §11.61.120. Harassment in the second degree.
- New Jersey Code §2C:14-9(c) Invasion of privacy, degree of crime; defenses, privileges
- Texas Penal Code § 21.15. Improper photography or visual recording

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#1
SB2357
3-17-15

TESTIMONY OF SENATOR MAC SCHNEIDER (DISTRICT 42 - GRAND FORKS)

SENATE BILL 2357

HOUSE JUDICIARY COMMITTEE - MARCH 17, 2015

Mr. Chairman and members of the committee, my name is Mac Schneider and I represent Grand Forks' District 42 in the North Dakota Senate. I am the prime sponsor of SB 2357, legislation which would outlaw so-called "revenge porn" in North Dakota.

The concept of revenge porn is probably best described by an example: A college-age woman is asked by her college-age boyfriend to send racy pictures of herself to the boyfriend via text. She complies because she is in love with him and trusts that he will not share the intimate pictures with anyone else. Two months later, he breaks up with the woman and, out of spite, publishes the photos to the Internet and shares them with the entirety of his fraternity via text. The images quickly go viral around campus. The young woman's privacy is violated and her reputation is harmed, causing her serious emotional distress. Because the ex-boyfriend obtained the pictures consensually, the distribution of the images of the adult woman is presently not a crime under North Dakota law.

Somewhat sickeningly, a cottage industry has developed around revenge porn. The attached article from Fox News discusses a recent conviction of a purveyor of revenge pornography who ran a "website where people posted nude pictures of their ex-lovers, who then had to pay . . . to take down the images."

As one can imagine, this very public release of intimate images can be devastating. The attached Associated Press article recounts the testimony of a victim. "I lost my family. They think that I brought shame on them. My reputation is ruined."

According to the National Conference of State Legislatures, 13 states have already enacted laws prohibiting revenge porn. To that end, SB 2357 would outlaw the "distribution of intimate images" in North Dakota.

A person would commit this offense where he or she "knowingly or intentionally distributes to any third party any intimate image of an individual 18 years old or older" if 1) "[t]he person knows that the depicted individual has not given consent to the person to distribute the image;" 2) [t]he intimate image was created by or provided to the person under circumstances in which the individual has a

reasonable expectation of privacy;" and 3) "[a]ctual emotional distress or harm is caused to the individual as a result of the distribution[.]"

Importantly, line 26 on page 2 through line 2 on page 4 provides exemptions for law enforcement, prosecutors, those who report criminal offenses, court proceedings, medical procedures, and intimate images that are voluntarily exposed or portrayed in a lawful commercial setting. The bill also carves out exemptions for service providers, including providers of internet, telecommunications, and cable services.

Finally, section 2 of the bill allows for a private right of action (i.e., a civil remedy) against anyone violating the provisions of section 1 of the bill.

Mr. Chairman, we all hope our loved ones would make the right decision by not sharing intimate images with anyone in the first place. But a mistake made by a young person in love shouldn't mean suffering public humiliation of the most intimate kind. I believe this bill appropriately places consequences upon those who shamefully breach the trust of their partners.



Kevin Bollaert, 'revenge porn' website operator, convicted of theft, extortion

Published February 03, 2015 | Associated Press

A San Diego man has been convicted of running a "revenge porn" website where people posted nude pictures of their ex-lovers, who then had to pay the man to take down the images.

Kevin Bollaert, 28, was found guilty Monday of 27 counts, including identity theft and extortion, and faces up to 20 years in prison. The San Diego County Superior Court jury was unable to reach verdicts on two charges of identity theft and conspiracy, and a judge declared a mistrial on the counts.

Attorney General Kamala Harris told reporters in Los Angeles on Tuesday that the jury sent a message that criminals attempting to exploit victims from behind a computer screen "will not be shielded from the law or jail."

The victims came from diverse backgrounds, teachers, wives, professionals. The photographs, once discovered by others, led to lost jobs and damaged relationships. In one case, a victim attempted suicide, she said.

Bollaert subjected his victims to "shame, and embarrassment, in the context of their family, their community and their workplace," Harris said.

She added that her office was examining possible revisions in state law to keep pace with how criminals are using technology.

Those areas include applications for search warrants, which can be needed to seize online posts in such cases.

It was believed to be the first conviction of an operator of a revenge-porn website, although two months ago a Los Angeles man who posted a topless photo of his ex-girlfriend on Facebook was sentenced to a year in jail for violating California's new revenge-porn law.

That law was enacted in October 2013, after the incidents for which Bollaert was charged. It makes it a misdemeanor to post identifiable nude pictures of someone else online without their permission and with the intent of causing serious emotional distress or humiliation.

The attorney general's office believes Bollaert's actions were more serious and merited more than the one year in prison permitted for a misdemeanor, spokesman David Beltran said in an email Tuesday. Moreover, the revenge-porn law does not address the allegations that Bollaert extorted money, he said.

The term "revenge porn" is used because most of the explicit images have been posted online by former lovers in attempts to shame their former partners after a breakup.

Between Dec. 2, 2012, and Sept. 17, 2013, Bollaert allowed people to anonymously post more than 10,000 images, mainly of women, on his now-defunct ugotposted.com website without the knowledge of those in the pictures, prosecutors said. The victims' names, cities where they lived and other information such as links to their Facebook profiles also were posted.

Bollaert also ran another now-defunct website, changemyreputation.com, where victims could go and be charged up to \$350 to have the images removed.

He earned tens of thousands of dollars from the scheme, prosecutors said.

More than two dozen people were named as victims in the criminal complaint. Some testified at trial that they suffered humiliation and fear when their private photos were posted, and prosecutor Tawnya Austin told jurors that they also were harassed by people who tried to contact them through Facebook or by email.

3/16/2015

Kevin Bollaert, 'revenge porn' website operator, convicted of theft, extortion | Fox News

One woman testified that it ruined her reputation and her relationship with her family.

At trial, prosecutors argued that Bollaert knew the images on his website were private and posted without consent of the victims, describing the business as essentially a blackmail scheme.

Bollaert's lawyer, Emily Rose-Weber, said her client may have conducted an immoral business that took advantage of "human weakness," but he didn't break the law by allowing others to post the explicit photos.

"It's gross, it's offensive, but it's not illegal," she said.

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LIFESTYLE

Revenge-porn website operator convicted in San Diego of conspiracy, ID theft and extortion

By ASSOCIATED PRESS
February 02, 2015 - 8:59 PM

SAN DIEGO — A San Diego man charged with running a so-called revenge porn website where people posted nude pictures of their ex-lovers — and then charging the victims to take down the images — was convicted Monday of 27 felony charges.

Kevin Bollaert, 28, was found guilty Monday of identity theft and extortion. He faces up to 20 years in prison.

The San Diego County Superior Court jury was unable to reach verdicts on two charges of identity theft and conspiracy and a judge declared a mistrial on the counts.

It was believed to be the first conviction of a revenge porn website operator, although two months a Los Angeles man who posted a topless photo of his ex-girlfriend on Facebook was sentenced to a year in jail for violating California's new revenge porn law.

That law wasn't used against Bollaert.

The term revenge porn is used because most of the explicit images have been posted online by former lovers in attempts to shame their former partners after a breakup.

Prosecutors said that in 2012 and 2013, Bollaert allowed people to anonymously post more than 10,000 images, mainly of women, on his now-defunct ugotposted.com website without the knowledge of those in the pictures. The victims' names, cities where they lived and other information such as links to their Facebook profiles also were posted, authorities alleged.



Bollaert also ran another now-defunct website, changemyreputation.com, where victims could go and be charged up to \$350 to have the images removed.

Prosecutors said he earned tens of thousands of dollars from the scheme.

More than two dozen people were named as victims in the criminal complaint. Some testified at trial that they suffered humiliation and fear when their private photos were posted and prosecutor Tawnya Austin told jurors that they also were harassed by people who tried to contact them through Facebook or by email.

"It ruined my life and I'm still going through it," testified one woman, who said she was thrown out of her home after her nude photos were posted. "I lost my family. They think that I brought shame on them. My reputation is ruined."

At trial, prosecutors argued that Ballaert knew the images on his website were private and posted without consent of the victims, and described the business as essentially a blackmail scheme.

Bollaert's lawyer, Emily Rose-Weber, argued in court that her client may have conducted an immoral business that took advantage of "human weakness" but he didn't break the law by allowing others to post the explicit photos.

"It's gross, it's offensive, but it's not illegal," she said.

NEXT IN LIFESTYLE

Going for it: Why my fifth marathon feels, in a way, like first