

43 S.U. L. Rev. 251

Southern University Law Review
Spring, 2016

Article

TURN YOUR CAMERAS OFF IN THE BEDROOM: "REVENGE PORN" IS NOW A FELONY IN LOUISIANA

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Imagine waking up and checking your phone as most Americans do. You immediately notice the missed phone calls and text messages from friends, family, and co-workers. You are horrified to learn from them that there are naked pictures of you, which you sent to an ex-boyfriend/girlfriend in confidence posted on Facebook. This exact scenario happened in 2014 in a rural parish in South Louisiana where a female was shocked to log onto her Facebook account to learn her ex-boyfriend had posted on Facebook an explicit video of her that she consented to filming.¹ She assumed the defendant knew the video was to remain private.² The female contacted the local sheriff's office and they charged the male with cyberstalking.³ Unfortunately, after extensive research performed by the district attorney's office and further investigation by the sheriff's office, the case was marked nolle prosequi⁴ (dismissed).⁵ At the time of the offense, Louisiana did not have a revenge porn law and the facts of the case did not fit into any other crime.⁶ Fast- *252 forward to August 2015, you can now contact local law enforcement if you live in the State of Louisiana for help. Or can you?

PART I: BACKGROUND

A newly enacted law making it illegal to distribute revenge porn is already leading to arrests in Louisiana.⁷ Brandon Wade Davis, a man who shared a lewd photo on social media that his girlfriend sent to him privately, was arrested and booked into the Vernon Parish Correctional Center in late September 2015.⁸ He was charged with one count of nonconsensual disclosure of a private message or photograph in violation of [Louisiana Revised Statute 14:283.2](#).⁹ This arrest is one of the first in Louisiana since the revenge porn law came into effect on August 15, 2015.¹⁰ Before the enactment of this law, men and women across Louisiana could expose their former partner's private photographs with little or no criminal liability.

This phenomenon is not just contained in the State of Louisiana but has occurred all across the country. In 2013, a man in New York, Ian Barber, posted naked pictures of his girlfriend, Adriana Batch, on his Twitter account.¹¹ He then distributed the pictures to her sister and employer without permission from her.¹² Ian was arrested and charged with aggravated harassment in the second degree.¹³ After considering the case, the Criminal Court of the City of New York concluded the defendant's conduct was inexcusable. However, Barber did not violate any of the criminal statutes he was charged with and the court dismissed the case.¹⁴ The court reasoned for the charge of aggravated harassment the defendant must have some communication with the victim.¹⁵ In this case, the defendant never contacted the victim, nor was it even alleged the victim received a Tweet from the defendant containing the pictures; *253 she only saw that

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defendant had posted them on his Twitter account.¹⁶ This is just one of the many cases where justice simply could not prevail.

This all changed in Louisiana when House Representative Julie Stokes, a Republican from Kenner, Louisiana, introduced House Bill 489, in the 2015 Regular Legislative Session.¹⁷ This bill is now enacted in the Louisiana Revised Statute book as [Louisiana Revised Statute 14:283.2](#) nonconsensual disclosure of a private image.¹⁸ Louisiana's new statute reads as follows:

A person commits the offense of nonconsensual disclosure of a private image when all of the following occur:

(1) The person intentionally discloses an image of another person who is seventeen years of age or older, who is identifiable from the image or information displayed in connection with the image, and whose intimate parts are exposed in whole or in part.

(2) The person who discloses the image obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private.

(3) The person who discloses the image knew or should have known that the person in the image did not consent to the disclosure of the image.

(4) The person who discloses the image has the intent to harass or cause emotional distress to the person in the image, and the person who commits the offense knew or should have known that the disclosure could harass or cause emotional distress to the person in the image.¹⁹

Revenge porn is defined as the distribution of a lewd or sexually explicit photograph or video of an individual where that individual did not consent to the distribution and the image is publically shared.²⁰ The term "revenge porn" is presumably used because usually a former intimate partner shares this type of photograph or video for revenge or humiliation. Representative Julie Stokes was quoted saying:

The nonconsensual distribution of private images is a violation of personal privacy and is a severe form of ***254** bullying that can be extremely damaging to its victims. This proposed law will help ensure that perpetrators are being held accountable for their actions and also send the message that this type of behavior is not tolerated in Louisiana. Now is the time to pass legislation to ensure Louisiana is doing all that it can to help protect individuals from future privacy abuse.²¹

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The issue of revenge porn received national attention in September 2014, when a hacker gained entry into more than 100 phones belonging to celebrities through Apple's iCloud and posted them for the world to see.²² As a response to this and twenty-four other states enacting similar laws protecting victims of revenge porn, Louisiana also drafted and passed legislation to make it a crime to distribute revenge porn.²³ The following states have enacted revenge porn laws: Alaska, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Maine, Maryland, New Jersey, New Mexico, Nevada, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.²⁴ The Federal District of Columbia has also enacted a similar law.²⁵ Arizona, Connecticut, Kansas, Kentucky, Massachusetts, Missouri, New York, Rhode Island, South Carolina, and Tennessee all have pending legislation regarding revenge porn.²⁶

The problem of revenge porn is not just contained in the United States, but is also a problem in other countries around the world. In 2009, the Philippines were the first country to outlaw revenge porn.²⁷ England, Wales, Israel, and parts of Australia have also outlawed revenge porn between the years of 2013 and 2015.²⁸ In Germany, a court ruled that a *255 person must delete the photos upon request by the person who sent them.²⁹ In 2014, Japan enacted the Revenge Porn Victimization Prevention Act.³⁰ This act made revenge porn illegal and only took two days to pass through the Japanese National Legislature.³¹

PART II: FELONY STATUS

Louisiana made a bold move when they enacted [Louisiana Revised Statute 14:283.2](#). The legislature made the penalty for this statute a felony because the penalty can range up to two years in prison.³² Now, whoever commits the offense of nonconsensual disclosure of a private image shall be fined not more than ten thousand dollars, imprisoned with or without hard labor for not more than two years, or both.³³ Only five states, including Louisiana, have made this crime a felony: Hawaii, Idaho, Illinois, and Nevada.³⁴ The other twenty-one states have classified the crime as a misdemeanor, and some leading up to a felony on multiple offenses.³⁵ An example of this is in Florida, where a repeat offender is charged with a felony in the third degree.³⁶ The District of Columbia also has a similar law, but followed suit with the majority of the other states and chose to classify it as a misdemeanor.³⁷ It should be pointed out that Louisiana has the highest incarceration rate in the country.³⁸ Why did Louisiana choose such a harsh penalty, when so many other states have declined to and the space in jails is so limited?

Popular media techniques are bursting with borderline pornography such as Axe commercials,³⁹ the television show *Naked and Afraid*,⁴⁰ and Viagra commercials.⁴¹ We must remember the person who *256 sent this photo or allowed the other person who filmed them did give some type of consent. On the other hand, arguably one of the most popular magazines of all time, *Playboy*, announced in October 2015 there will no longer be nudity in their magazine.⁴² The motive here was to get more readers to enjoy reading the magazine in schools and the workplace.⁴³ Is it possible the new trend will be more PG-13, so that content can be enjoyed everywhere?

The most logical reason for the stiff penalty is that Louisiana is trying to deter its residents from the inexcusable act of revenge. Whether or not the person consented to taking or sending the photograph, they never consented to the release of it. The Cyber Civil Rights Initiative (CCRI) has launched an end revenge porn campaign. Its research on the topic has led to some disturbing statistics. One in ten partners threatens to expose pictures of their former partners without

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consent and 60% of those who threaten do expose the pictures.⁴⁴ In addition to posting the picture or video, 59% post a first name, 49% post social networking information on the victim, 26% post an email address, 20% post a phone number, 16% post a home address, 14% post-employment information, and 2% post a social security number.⁴⁵

According to research by CCRI, 90% of revenge porn victims sampled by CCRI are women.⁴⁶ Of those women, 93% have suffered severe emotional distress, 49% have been stalked and/or harassed after their photos went public, and 51% have had suicidal thoughts due to revenge porn.⁴⁷ The CCRI is contacted by twenty to thirty victims of this crime a month.⁴⁸ The most disturbing effect of revenge porn is some of the victims have committed suicide as a result of being victimized in this way. In 2012, 15-year-old Audrie Pott, while at a party, was assaulted by multiple boys.⁴⁹ She later found out that the boys had taken pictures and distributed them around her school.⁵⁰ A week later, Audrie's mother checked her out of school because Audrie told her she wasn't feeling well.⁵¹ Twenty minutes after being home, her mother found her dead in her room hanging from a belt.⁵² It is hard to argue that this crime should be anything other than a felony after instances like this, regardless if consent was given or if there was any expectation of privacy.

PART III: WHY EXISTING LAW IN LOUISIANA DID NOT PERTAIN TO “REVENGE PORN”

Before the enactment of [Louisiana Revised Statute 14:283.2](#), Louisiana had similar laws in place that came close to penalizing defendants for distributing revenge porn, but did not identify the issue specifically.⁵³ This part of the paper will discuss these laws and why they are insufficient for the courts and prosecutors. First, [Louisiana Revised Statute 14:106 \(A\)\(2\)\(a\)](#) regarding obscenity, reads in pertinent part:

[T]he participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or display of, hard core sexual conduct when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political, or scientific value.⁵⁴

Hardcore sexual conduct is defined as the public portrayal, for its own sake, and for ensuing commercial gain of ultimate sexual acts, masturbation, sadomasochistic abuse, and physical contact of private body parts with or without a device.⁵⁵

Here, at first glance it appears that revenge porn could be prosecuted under [Louisiana Revised Statute 14:106\(A\)\(2\)\(a\)](#). The facts of a certain case could indicate an electronic communication--text message, email, or social media--and the communication could be hardcore sexual conduct intended for public portrayal. An essential element is the communication would have to be for commercial gain--being sold. In *State v. Honore*, the defendant was convicted under the obscenity statute *258 for selling pornographic magazines at a bookstore in Kenner, Louisiana.⁵⁶ An undercover detective bought five magazines from the store and they depicted obscene sexual acts.⁵⁷ In most situations of revenge porn, the act is not done for commercial gain but for humiliation.

Next is [Louisiana Revised Statute 14:40.3 \(B\)](#) cyberstalking, which is the most probable way that a prosecutor could secure a conviction for revenge porn, but it would have to meet strict requirements.⁵⁸ Cyberstalking is the action of

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any person "electronically mailing or electronically communicating to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing any person."⁵⁹ For cyberstalking, it could be possible to have a conviction for revenge porn if the defendant posted the revenge porn on social media or a website and repeatedly communicated with the victim electronically. Without repeated harassment from the defendant, the prosecution fails to prove all the required elements and the victim will not get the justice they deserve.

In *State v. Baker*, the defendant sent forty-six harassing emails to the victim over an eight-month period.⁶⁰ The Court held the facts of this case indicated repeated behavior.⁶¹ In a situation such as *Baker*, if a defendant harassed a victim repeatedly, and the defendant exposed a lewd or sexually explicit photograph, they could be convicted of cyberstalking. The same could also be true if the photograph was posted to social media multiples times to qualify as "repeatedly."

Next, is [Louisiana Revised Statute 14:81.1.1](#), the sexting statute.⁶² This law makes it illegal for anyone under the under the age of 17 years to knowingly and voluntarily use a computer or telecommunication device to transmit an indecent visual depiction of himself to another person. The law also states no person under the age of 17 years shall knowingly possess or transmit an indecent visual depiction that was transmitted by another under the age of 17 years.⁶³ The major problem with the law is that it only protects minors. It also makes it illegal to actually send the photos.⁶⁴ Although a great law, it does not address revenge porn unless the victim is a juvenile. If this law would be changed to include adults, it would penalize the victims for actually sending the photograph.

*259 Lastly, is [Louisiana Revised Statute section 14:283](#) addresses video voyeurism, and reads in pertinent part:

[T]he use of any camera, videotape, photo-optical, photoelectric, or any other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping a person where that person has not consented to the observing, viewing, photographing, filming, or videotaping and it is for a lewd or lascivious purpose; or the transfer of an image obtained by activity described above by live or recorded telephone message, electronic mail, the Internet, or a commercial online service.⁶⁵

In *State v. Wright*, the defendant was convicted of video voyeurism when police discovered 17 video tapes in the truck of his car during a traffic stop.⁶⁶ The video tapes were taken from the dressing rooms of his clothing store and none of the victims consented to the filming.⁶⁷ Here, the law basically deals with the lewd or explicit photographing and/or filming of a victim when they were unaware that they were being filmed.⁶⁸ In video voyeurism cases, the victims never consented to the filming, unlike revenge porn where the person may have known he or she was being filmed or photographed. Thus, this law fails to protect the victims of revenge porn as well.

After a thorough breakdown of the above laws it is shown that it may have been possible to obtain convictions for this type of act from the statutes mentioned above, but the facts of the case would have to be perfect. From this we can presume a defendant could escape prosecution by loop holes in the law.

PART IV: DRAFTING THE PERFECT REVENGE PORN LAW

Since the emergence of revenge porn laws, it has still not been easy for a prosecuting attorney to secure a conviction.⁶⁹ Some laws have heavy burdens and too many elements for prosecutors to prove.⁷⁰ Constitutional problems have also

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arisen in the State of Texas.⁷¹ In *Ex Parte Thompson*, appellant Ronald Thompson was arrested and charged with twenty-six counts of improper photography or visual recording in *260 violation of [section 21.15\(b\)\(1\) of the Texas Penal Code](#), otherwise known as the revenge porn statute.⁷² He challenged the statute as being unconstitutional.⁷³ The Fourth Circuit Court of Appeals, in San Antonio, Texas, held that subsection 21.15(b)(1) of the Texas Penal Code is void on its face as it fails intermediate scrutiny, and violates the First Amendment to the United States Constitution because it is overbroad.⁷⁴ The court reversed the trial court's denial of defendant's application for writ of habeas corpus, and remanded the case to the trial court to dismiss the prosecution.⁷⁵

Mary Ann Frank, Law Professor at the University of Miami School of Law, drafted a guide for legislators to help them draft the best law to ensure revenge porn cases get prosecuted to the full extent.⁷⁶ According to the legislative guide, a revenge porn law should set out all the elements of the offense, so it is clear what constitutes revenge porn.⁷⁷ The law should contain exceptions for sexually explicit images that are voluntarily exposed in public or commercial settings, such as forwarding pornography links, flashing, and criminal investigations.⁷⁸ A severability clause should be included to prevent the whole law from being declared invalid.⁷⁹ A severability clause allows the court to delete any unconstitutional clauses or wording from a statute, while leaving the other parts of the law in effect.⁸⁰ A statute also needs to define what nudity is, so that it is clear what the state will prosecute in order to prevent false arrest.⁸¹ The law must also apply to the distribution of printed photographs and DVD's and not just social media.⁸² Legislation should not include intent, such that there must be proof of intent to harass, embarrass, or cause intentional infliction of emotion distress.⁸³ The law should not only prevent a current or former intimate partner from disseminating the photograph, but should also place restrictions on friends, co-workers, and strangers.⁸⁴ If all of the above requirements are met, then the state should have no problem prosecuting criminal offenders under these laws.

***261 PART V: COMPARING THE “PERFECT” ILLINOIS LAW TO LOUISIANA'S NEW LAW**

Illinois' revenge porn law was modeled after the guide created by Professor Mary Ann Franks.⁸⁵ Section 5 of the Illinois Criminal Code of 2012 was amended in 2015 by adding Section 11-23.5, non-consensual dissemination of private images.⁸⁶ The Cyber Civil Rights Initiative, which provides services, support, and advocacy for victims of revenge porn, says publicly that Illinois has the best revenge porn law.⁸⁷ This law was passed and became effective before the revenge porn law came into effect in Louisiana. This part of the article will compare and contrast the “best” revenge porn law to Louisiana's law to see how effective the Louisiana law really is.

The law in Illinois begins with definitions with a reference to Section 17-0.5 which defines computer, computer program, and data.⁸⁸ Louisiana's law is absent of this information, but it does not make the Louisiana law useless, as it will have minimal effects. The next definition is “image,” which in Illinois includes a photograph, film, videotape, digital recording, or other depiction or portrayal of an object, including the human body.⁸⁹ Louisiana's law has the exact language in the statute.⁹⁰ Louisiana and Illinois also feature similar wording when they define “intimate part.”⁹¹ An intimate body part is fully unclothed, partially unclothed, or transparently clothed genitals, pubic area, or anus.⁹² If the person depicted in the image is a female, “intimate parts” also mean a partially or fully exposed nipple, including exposure through transparent clothing.⁹³

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Illinois next defines "sexual act," and this is where the two laws differ because Louisiana's law is absent of the definition of sexual act.⁹⁴ A sexual act, as defined by the Illinois statute, means sexual penetration, *262 masturbation, or sexual activity.⁹⁵ At first glance, it would appear that Louisiana's law does cover these scenarios because according to the Louisiana law, an intimate body part must be exposed and most people would assume a sexual act involves nudity.⁹⁶ Reading further in Section (a) of the Illinois law, they further describe a "sexual activity" as:

[K]nowing touching or fondling by victim or another person or animal, either directly or **through clothing**, of the sex organ, anus, or breast of the victim or another person or animal for the purpose of sexual gratification or arousal; any transfer or transmission of semen upon any part of the **clothed** or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or another; an act of urination within a sexual context; any bondage, fetter, or sadism masochism; sadomasochism abuse in any sexual context.⁹⁷

In general terms this means that the Illinois law protects more than just nudity. It also protects the touching of a body part described in the law by the victim who is fully clothed (*e.g.*, a fully clothed victim touching the sexual organ of a man or vice versa).⁹⁸ It would also protect a fully clothed victim who is performing a sexual act.⁹⁹ If the above scenarios would occur in Louisiana, law enforcement would not be able to make an arrest for revenge porn.

In Louisiana, the law protects victims who are 17 years of age or older.¹⁰⁰ This protects the class of people that the sexting law, [Louisiana Revised Statute 14:81.1.1](#), does not cover (sexting only protects persons 17 years of age and under).¹⁰¹ In Illinois, the law protects adults who are 18 years of age or older.¹⁰² This is the same as Louisiana because in Illinois their sexting law, found in [705 Illinois Compiled Statute 405/3-40](#) minors involved in electronic dissemination of indecent visual depictions in need of supervision, protects everybody under the age of 18.¹⁰³ Both states also provide that a face does not have to be shown for a person to *263 be charged under the crime.¹⁰⁴ The laws provide that a person only has to be identifiable from the image or information displayed in connection with the image.¹⁰⁵ This means that both states recognize how dangerous it is when personal information is displayed, such as: names, social security numbers, addresses, and employment.¹⁰⁶ The question that will inevitably arise is whether a tattoo, that is usually seen when clothed, qualifies as an identifiable marker on a person's body? This question will hopefully be answered in time.

Louisiana and Illinois added that the person disclosing the image must have obtained it under the circumstance in which a reasonable person would know or understand that the image was to remain private.¹⁰⁷ Here, the prosecution would only have to prove that the victim told the distributor he/she wished the image to remain private or sent it in a "private" text message. Both states also provide that the person disclosing the image knew or should have known that the person in the image did not consent to the disclosure of the image.¹⁰⁸ This could be proved if the victim had notified the distributor that he/she wished the image to remain private or sent it in a "private" text message.

A major difference in the two laws is that in Louisiana the person disclosing the image must have had the intent to harass or cause emotional distress to the victim, and that person knew or should have known the disclosure could harass or cause emotional distress to the victim.¹⁰⁹ The Illinois law is absent of such wording, and this is a major reason why it has been looked upon so highly by non-profit organizations. Motive should not be a factor in these types of cases. Offenders could have multiple reasons to expose their former partner. They may do it for a pecuniary gain, for fun, or for

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no reason at all. Both laws contain exceptions that do not constitute the commission of the offense.¹¹⁰ These exceptions include: when the disclosure is made by any criminal justice agency for the purpose of a criminal investigation that is otherwise lawful; when it is made for the purpose of, or in connection with, the reporting of unlawful conduct to law enforcement or a criminal justice *264 agency; when the person depicted in the image voluntarily or knowingly exposed his or her intimate parts in a public setting (e.g., flashing for beads on Bourbon Street in New Orleans); or serves a lawful public purpose that is important.¹¹¹

Absent in the Illinois law is a definition of a criminal justice agency, but Louisiana decided to include it.¹¹² Also missing from the Illinois law is the definition of "disseminate." Louisiana uses the word disclosure and defines it as, "to, electronically or otherwise, transfer, give, provide, distribute, mail, deliver, circulate, publish on the Internet, or disseminate by any means."¹¹³ It appears that this covers any type of disclosure other than one done electronically.

Lastly, both states decided to make the penalty for the crime a felony, which as stated above, is different from the national trend.¹¹⁴ A felony in Louisiana is any crime that an offender may be sentenced to death or imprisonment at hard labor.¹¹⁵ A felony in Illinois is any offense for which a sentence to death or where the term for imprisonment in a penitentiary for one year or more is provided.¹¹⁶ In Louisiana, the maximum sentence for a violation of the revenge porn law is a fine of \$10,000 and imprisonment with hard labor for two years.¹¹⁷ As stated before, Illinois has also elected to make revenge porn a class four felony.¹¹⁸ In Illinois, a class four felony is punishable by up to three years imprisonment.¹¹⁹ An offender may also have to pay a fine up to \$25,000.¹²⁰ Additionally, defendants also shall forfeit to the state any profits or proceeds and any property the person has acquired or maintained from the crime.¹²¹ Although the crime is a felony in Louisiana, the penalties in Illinois are much harsher.

*265 PART VI: CIVIL REMEDIES

Lastly, this article focuses on the civil remedies available to victims. The argument could be made that revenge porn laws are not needed and will only subject the victims to more unwanted attention.¹²² The argument is that there should be an absence of criminal laws, because there are a variety of civil remedies available. Tort laws such as defamation, invasion of privacy, and intentional infliction of emotional distress are just a few.¹²³ These options may sound good at first, but they all fail when put to the test.

The litigation involved with filing a law suit is expensive and time consuming. Victims of any crime can come from any socioeconomic background, and money is always a consideration when filing law suits. In a criminal prosecution the victim does not need to obtain an attorney or pay court costs. Although they do have to give up their time for court proceedings, it's a small price to pay for justice. It might be hard for victims to obtain the money after a judgment. So what kind of justice is this for the victims? Moreover, even after successful litigation and an order from a judge to have a photo taken down from social media or a website, such as myex.com,¹²⁴ it is almost impossible to completely rid the Internet of all the photographs.

There have been a few cases where civil suits have been very successful. In February 2014, a Harris County jury in Texas awarded a female victim of revenge porn \$500,000.¹²⁵ This is the largest revenge porn verdict in the country to date.¹²⁶ Although this may sound promising, the facts are that the defendant was a recent college graduate that may never be able to pay such a large amount of money.¹²⁷ The tort sued upon in this case was intentional infliction of

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emotional distress.¹²⁸ Intentional infliction of emotional distress is typically easy to allege but *266 very hard to prove in a court.¹²⁹ Whether a much lower money judgment will deter the act rather than incarceration is something that only time will tell. Freedom and a clean record may be a more precious human right than a money judgment.

PART VII: CONCLUSION

The author acknowledges the Louisiana Legislature did a great thing by enacting this law. The author completely advocates the purpose of this law for both the sake of men and women. Louisiana has had a long history of domestic violence and revenge porn can definitely be a factor in domestic violence or lead to domestic violence. According to a report published by the Violence Policy Center, Louisiana ranks fourth in the nation for women murdered by men.¹³⁰ Forty-five women were murdered by men and fifty-one percent of those killed were the wives, ex-wives, girlfriends, or live-in girlfriends of the offenders.¹³¹ Again, Louisiana is faced with another statistic of which no one could be proud of, and the author believes the legislature is helping to change this by enacting laws like [Louisiana Revised Statute 14:283.2](#).

Although the author advocates this law, he also thinks the legislature missed the ultimate purpose in enacting the law, which is to make others accountable for the phenomenon of revenge porn. The law does in fact punish those who distribute revenge porn, but as compared to another similar revenge porn law, it still lacks the ultimate purpose. The law burdens prosecutors with proving the defendant must have had the intent to harass or cause emotional distress to the victim and that person knew or should have known that the disclosure could harass or cause emotional distress to the victim. Every victim may feel differently about the implications of revenge porn and all victims may suffer different personal hardships due to their photographs being on public display.

The story of 15-year-old Audrie Potts¹³² ended in her untimely and devastating death, while Hollie Toups¹³³ in Texas became an *267 advocate for other victims of revenge porn and its awareness. The facts are that one's personal photographs should not be distributed without their permission regardless of the intent of the person who distributed the image. The author thinks that no victim gains anything when placed in this situation.

Louisiana law also does not contain any other wording about what revenge porn is other than the disclosure of an intimate photo. This leaves victims unprotected from photos of them involved in a sexual act when they are clothed. Distributors can still post compromising photographs or videos of their former partners and escape criminal liability. It is easy to say that the best way to stop revenge porn is for men and women to stop sending the photographs, but who can tell people how to act in their personal life? The legislature should change the law to include such images where the victims are clothed and the Illinois law could be used as a model to do so. Lastly, [Louisiana Revised Statute 14:283.2](#) lacks forfeiture of proceeds, profits, or property acquired from the crime. If a defendant is allowed to keep the photographs or videos they could post it repeatedly or send it to others to post. The law should not allow them to gain anything from this inexcusable act.

Louisiana has taken a step in the right direction, which is more than other states have done. If anything, the author hopes this article helps victims of revenge porn realize they have options and should not stand quiet. Hopefully, the legislature here in the great State of Louisiana catches on that the law needs to be amended and does so in a timely fashion.

Footnotes

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- d1 Lee C. Durio is a Juris Doctorate Candidate December 2016 at Southern University Law Center; B.S., 2013 University of Louisiana at Lafayette. This note would not have been possible without the guidance and comments from my advisor, Assistant District Attorney Pamela Lemoins. I also want to thank my loving wife, Tonia, and son, Cole, for their undying support. This note is dedicated to the memories of my grandfather's Ellis "T-El" Melancon Sr. and R.J. "Boo-Boo" Durio, and lastly to the memory of Baby Durio.
- 1 Interview with Pamela Lemoins, Assistant District Attorney, 16th Judicial District Court, in St. Martinville, La. (Nov. 18, 2015).
- 2 *Id.*
- 3 *Id.*
- 4 [LA. CODE CRIM. PROC. ANN. art. 691](#) (2015) (The district attorney has the power, in his discretion, to dismiss an indictment or a count in an indictment, and in order to exercise that power it is not necessary that he obtain consent of the court. The dismissal may be made orally by the district attorney in open court, or by a written statement of the dismissal signed by the district attorney and filed with the clerk of court. The clerk of court shall cause the dismissal to be entered on the minutes of the court).
- 5 Interview with Pamela Lemoins, Assistant District Attorney, 16th Judicial District Court, in St. Martinville, La. (Nov. 18, 2015).
- 6 The other crimes are discussed in detail in Part III of this article.
- 7 Scottie Hunter, *Louisiana revenge porn law already leading to arrest*, KPLC.com (Sept. 28, 2015), available at <http://www.kplctv.com/story/30135553/louisianasrevenge-porn-law-already-leading-to-arrests> (last visited Oct. 5, 2015).
- 8 Johnathan Manning, *Hornbeck man charged with sharing intimate photos without consent*. WAFF.com (Sept. 25, 2015), available at <http://www.waff.com/story/30117853/Hornbeck-man-charged-with-sharing-intimate-photoswithout> (last visited Oct. 5, 2015).
- 9 *Id.*
- 10 Hunter, *supra*, at note 7.
- 11 [People v. Barber](#), 42 Misc. 3d 1225(A), 992 N.Y.S.2d 159, 2014 WL 641316 at *1 (N.Y. City Crim. Ct. 2014) (unreported table decision).
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 *Id.* at *5.
- 16 *Id.* at *6.
- 17 Act No. 231, 2015 La. Acts 1.
- 18 [LA. REV. STAT. ANN. § 14:283.2](#) (2015).
- 19 [LA. REV. STAT. ANN. §14:283.2\(A\)](#) (2015).

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- 20 Sarah Bloom, *No Vengeance for 'Revenge Porn Victims: unraveling why this latest female-centric, intimate-partner offense is still legal, and why we should criminalize it*, FORDHAM URB. L.J. 233, 1 (2014).
- 21 Governor Jindal Announces Legislation to Protect Individuals from Nonconsensual Disclosure of Private Images. Gov.louisiana.gov (2015), available at <http://gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=4919&printer=12015> (last visited Oct. 22, 2015).
- 22 Mark Ballard, *Louisiana House bill would make distributing 'private image' photos a crime*. Theadvocate.com (2015), available at <http://theadvocate.com/news/neworleans/neworleansnews/12170421-123/louisiana-house-bill-would-make> (last visited Oct. 6, 2015).
- 23 LA. REV. STAT. ANN. § 14:283.2 (2015).
- 24 C.A. Goldberg, *State Revenge Porn Laws*. C.A. Goldberglaw.com (2015), available at <http://www.cagoldberglaw.com/states-with-revenge-porn-laws/> (last visited Oct. 6, 2015).
- 25 *Id.*
- 26 *Id.*
- 27 Mary Anne Franks, *Drafting an Effective "Revenge Porn" Law: A Guide for Legislators*, Endrevengeporn.com (2015), available at <http://www.endrevengeporn.org/guide-to-legislation/> (last visited Oct. 22, 2015).
- 28 *Id.*
- 29 *Id.*
- 30 Shigenori Matsui, *The Criminalization of Revenge Porn in Japan*, 24 WASH. INT'L L.J. 289 (2015).
- 31 *Id.*
- 32 LA. REV. STAT. ANN. § 14:283.2(E) (2015).
- 33 *Id.*
- 34 C.A. Goldberg, *State Revenge Porn Laws*. C.A. Goldberglaw.com (2015), available at <http://www.cagoldberglaw.com/states-with-revenge-porn-laws/> (last visited Oct. 6, 2015).
- 35 *Id.*
- 36 Fla. Stat. § 784.049 (2014).
- 37 Goldberg, *supra* note 34.
- 38 Heather C. West & William J. Sabol, U.S. Dep't of Justice, Bureau of Justice Statistics, *Prison Inmates at Midyear 2008-Statistical Table 10*, 30 (2009), <http://www.bjs.gov/content/pub/pdf/p08.pdf>.
- 39 Axe is a brand of male grooming products, owned by the British-Dutch company Unilever, and marketed towards the young male demographic.
- 40 *Naked and Afraid* is an American reality series that airs on the Discovery Channel.
- 41 Sildenafil, sold as Viagra, is a medication used to treat erectile and pulmonary arterial hypertension.
- 42 Mel Robbins, *Why is Playboy Giving up Nudity?* CNN.com (2015), available at <http://www.cnn.com/2015/10/13/opinions/robbins-playboy-no-more-nudity/> (last visited Oct. 29, 2015).

TURN YOUR CAMERAS OFF IN THE BEDROOM: "REVENGE...", 43 S.U. L. Rev. 251

- 43 *Id.*
- 44 Natalie Webb, *End Revenge Porn Infographic*. Cybercivilrights.org (2014), available at http://www.cybercivilrights.org/end_revenge_porn_infographic (last visited Oct. 8, 2015).
- 45 *Id.*
- 46 *Id.*
- 47 *Id.*
- 48 Franks, *supra* note 27, at 18.
- 49 *Id.*
- 50 *Id.*
- 51 *Id.*
- 52 *Id.*
- 53 LA. REV. STAT. ANN. §14:40.3(2015); LA. REV. STAT. ANN. § 14:81.1.1(2014); LA. REV. STAT. ANN. §14:106(A)(2)(a)(2014); LA. REV. STAT. ANN. §14:283.2(2015).
- 54 LA. REV. STAT. ANN. § 14:106(A)(2)(a)(2014).
- 55 LA. REV. STAT. ANN. § 14:104(A)(2)(b)(2014).
- 56 State v. Honore, 564 So. 2d 345, 346-347 (La. Ct. App. 1990).
- 57 *Id.* at 347.
- 58 LA. REV. STAT. ANN. § 14:40.3(B)(2) (2015).
- 59 *Id.*
- 60 State v. Baker, 148 So.3d 217, 225 (La. Ct. App. 2014).
- 61 *Id.* at 222.
- 62 LA. REV. STAT. ANN. §14:81.1.1 (2014).
- 63 § 14:81.1.1(A),(B) (2014).
- 64 § 14:81.1.1(A)(1)(2014).
- 65 LA. REV. STAT. ANN. § 14:283 (2015).
- 66 State v. Wright, 931 So. 2d 432, 436 (La. Ct. App.2006).
- 67 *Id.* at 450.
- 68 LA. REV. STAT. ANN. § 14:283(A)(1) (2015).
- 69 Ex parte Thompson, 414 S.W. 3d 872, 874 (Tex. App.-San Antonio 2013).
- 70 LA. REV. STAT. ANN. § 14:283.2 (2015).

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- 71 Ex parte Thompson, 414 S.W. 3d 872, 874 (Tex. App.-San Antonio 2013).
- 72 *Id.*
- 73 *Id.* at 875.
- 74 *Id.* at 881.
- 75 *Id.*
- 76 Franks, *supra* note 27, at 18.
- 77 *Id.*
- 78 *Id.*
- 79 *Id.*
- 80 David Gans, *Article: Severability as Judicial Lawmaking*, 76 GEO. WASH. L. REV. 639 (2008).
- 81 Franks, *supra* note 27, at 7.
- 82 *Id.* at 8.
- 83 *See id.* at 645-49.
- 84 *Id.*
- 85 Carrie Goldberg, *Seven Reasons why Illinois is Leading the Fight Against Revenge Porn* (2014), available at <http://www.endrevengeporn.org/seven-reasons-Illinois-leading-fight-revenge-porn/> (last visited Oct. 22, 2015).
- 86 720 ILL. COMP. STAT. § 5/11-23.5 (2015).
- 87 Goldberg, *supra* note 85.
- 88 *Id.*
- 89 *Id.*
- 90 LA. REV. STAT. ANN. §14:283.2(C)(3) (2015).
- 91 720 ILL. COMP. STAT. § 5/11-23.5(a) (2015), LA. REV. STAT. ANN. §14:283.2(C)(4) (2015).
- 92 720 ILL. COMP. STAT. § 5/11-23.5(a) (2015), LA. REV. STAT. ANN. §14:283.2(C)(4) (2015).
- 93 720 ILL. COMP. STAT. § 5/11-23.5(a) (2015), LA. REV. STAT. ANN. §14:283.2(0)(4) (2015).
- 94 720 ILL. COMP. STAT. § 5/11-23.5(a) (2015).
- 95 720 ILL. COMP. STAT. § 5/11-23.5(a) (2015).
- 96 LA. REV. STAT. ANN. §14:283.2(A)(1) (2015).
- 97 720 ILL. COMP. STAT. § 5/11-23.5(a)(1-5) (2015) (emphasis added).
- 98 720 ILL. COMP. STAT. § 5/11-23.5(a)(2) (2015).
- 99 *Id.*

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- 100 LA. REV. STAT. ANN. §14:283.2(A)(1) (2015).
- 101 LA. REV. STAT. ANN. § 14:81.1.1(A)(1-2) (2014).
- 102 720 ILL. COMP. STAT. § 5/11-23.5(B)(1)(A) (2015).
- 103 705 ILL. COMP. STAT. § 405/3-40(a) (2015).
- 104 720 ILL. COMP. STAT. § 5/11-23.5(b)(B) (2015), LA. REV. STAT. ANN. §14:283.2(A)(1) (2015).
- 105 720 ILL. COMP. STAT. § 5/11-23.5(b)(1)(B) (2015), LA. REV. STAT. ANN. § 14:283.2 (A)(1) (2015).
- 106 See Part II of this article for statistics.
- 107 720 ILL. COMP. STAT. § 5/11-23.5(b)(2) (2015), LA. REV. STAT. ANN. § 14:283.2 (A)(2) (2015).
- 108 720 ILL. COMP. STAT. § 5/11-23.5(b)(3) (2015), LA. REV. STAT. ANN. § 14:283.2 (A)(3) (2015).
- 109 LA. REV. STAT. ANN. § 14:283.2(A)(4) (2015).
- 110 720 ILL. COMP. STAT. § 5/11-23.5(c)(1-4) (2015), LA. REV. STAT. ANN. § 14:283.2 (B)(1-4) (2015).
- 111 720 ILL. COMP. STAT. § 5/11-23.5(c)(1-4) (2015), LA. REV. STAT. ANN. § 14:283.2 (B)(1-4) (2015).
- 112 LA. REV. STAT. ANN. § 14:283.2(C)(1) (2015).
- 113 LA. REV. STAT. ANN. § 14:283.2(C)(2) (2015).
- 114 720 ILL. COMP. STAT. § 5/11-23.5(f) (2015), LA. REV. STAT. ANN. § 14:283.2(E)(2015).
- 115 LA. REV. STAT. ANN. § 14:2(4) (2014).
- 116 720 ILL. COMP. STAT. § 5/2-7(1973).
- 117 LA. REV. STAT. ANN. § 14:283.2(E) (2015).
- 118 720 ILL. COMP. STAT. § 5/11-23.5(f) (2015).
- 119 730 ILL. COMP. STAT. § 5/5-4.5-45(a) (2012).
- 120 730 ILL. COMP. STAT. § 5/5-4.5-50(b) (2009).
- 121 725 ILL. COMP. STAT. § 5/124B-500(A)(1) (2012).
- 122 Sarah Jeong, *Revenge Porn Is Bad. Criminalizing It Is Worse*, WIRED.com. (2013), available at <http://www.wired.com/2013/10/why-criminalizing-revenge-porn-is-a-bad-idea/> (last visited Oct. 30, 2015).
- 123 Taylor Linkous, *It's Time for Revenge Porn to Get a Taste of Its Own Medicine: An Argument for the Federal Criminalization of Revenge Porn*, 20 RICH. J.L. & TECH. 14 (2014).
- 124 *Myex.com* is a cost free revenge porn website that allows former lovers to post nude photographs and videos of people with their names and other information.
- 125 Brian Rogers, *Jury awards \$500,000 in 'revenge porn' lawsuit*. Houstonchronicle.com (2014), available at <http://www.houstonchronicle.com/news/houstontexas/houston/article/Jury-awards-500-000-in-revenge-porn-lawsuit-5257436.php> (last visited Oct. 31, 2015).

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126 *Id.*

127 *Id.*

128 *Id.*

129 Frank J. Cavico, *The Tort of Intentional Infliction of Emotional Distress in the Private Employment Sector*, 21 HOFSTRA LAB. & EMP. L.J. 109 (2003).

130 Violence Policy Center, *When Men Murder Women*, VPC.ORG (2014), available at <http://www.vpc.org/studies/wmmw2014.pdf> (last visited Nov. 3, 2015).

131 *Id.*

132 Franks, *supra* note 27, at 18.

133 Meredith Bennett-Smith, *Hollie Toups Leads Women In Revenge Porn Class Action Lawsuit Against Texxxan.com, GoDaddy*, Thehuffingtonpost.com (Jan. 9, 2013), available at: http://www.huffingtonpost.com/2013/01/25/hollie-toups-leads-women-suing-revenge-porn-site-texxxan-go-daddy_n_2546066.html (last visited Oct. 7 2015).

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