



CYBER CIVIL RIGHTS INITIATIVE
1311 Miller Dr. Office G378 ♦ Coral Gables, FL 33146
(786) 860-2317 ♦ Info@cybercivilrights.org
♦ CyberCivilRights.org ♦

Ohio's Proposed "Revenge Porn" Senate Bill 251 Analysis and Recommendations

I. Background

The Cyber Civil Rights Initiative (CCRI) is a U.S.-based nonprofit organization focused on the issue of nonconsensual pornography, specializing in legislative reform, victim support, and empirical research. CCRI's President and Legislative and Tech Policy Director, Dr. Mary Anne Franks, is a constitutional law expert who authored the first model criminal statute on nonconsensual pornography in 2013. This statute has served as a template in nearly all of the 41 states that have passed legislation on the issue. Dr. Franks has worked with legislators from more than 30 states, members of Congress, and the Uniform Law Commission (ULC) on this topic. She was the primary drafter of the pending federal bill criminalizing nonconsensual pornography and of the ULC's Uniform Civil Remedies for the Unauthorized Disclosure of Intimate Images Act.

The unauthorized distribution of private, sexually explicit imagery causes immediate, devastating, and in many cases irreversible harm.¹ It is a frighteningly common form of abuse. CCRI's 2017 nationwide study on the perpetration and victimization of nonconsensual pornography found that 1 in 8 adult social media users has been targeted by or threatened with nonconsensual pornography.²

Once an intimate image of a victim is made available on a website or social media platform, it is accessible to anyone with Internet access, any of whom can download, forward, share, and copy it within seconds. A single image can quickly dominate the first several pages of Internet search engine results for a victim's name, reducing the victim's online reputation to a scroll of salacious links. Intimate images are also often directly transmitted to the victim's family, employers, co-workers, and peers through email, text message, and other means.

The exposure of such sensitive and private intimate images can wreak havoc on an individual's personal, professional, educational, and family life.³ Victims frequently experience emotional distress as well as depression, anxiety, agoraphobia, difficulty maintaining intimate relationships, and post-traumatic stress disorder.⁴ Some victims have been stalked, harassed, threatened with sexual assault, defamed as sexual predators, terminated from employment, expelled from their schools, or forced to change their names. Some victims have committed suicide.⁵

¹ See Mary Anne Franks, *Revenge Porn Reform: A View from the Front Lines*, 69 Fla. L. Rev 1251 (2017).

² Asia A. Eaton et al., *2017 Nationwide Online Study of Nonconsensual Porn Victimization and Perpetration: A Summary Report*, Cyber C.R. Initiative 11 (June 12, 2017). <https://www.cybercivilrights.org/wp-content/uploads/2017/06/CCRI-2017-Research-Report.pdf>.

³ See Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 Wake Forest L. Rev. 345 (2014).

⁴ Samantha Bates, *Revenge Porn and Mental Health: A Qualitative Analysis of the Mental Health Effects of Revenge Porn on Female Survivors*, *Feminist Criminology* (2017) Vol 12(1) 22-42, 38-9.

⁵ See Keats & Citron, *Criminalizing Revenge Porn*.

II. Analysis of Ohio S.B. 251

Ohio Sub. H. B. No. 497 is an important and admirable effort to recognize and deter this devastating form of abuse. The bill is particularly commendable for its civil remedies provisions and the provisions relating to employment and education.

However, two features of the proposed bill are very troubling and undermine the law's capacity to offer justice for victims.

1. **Limitation of the bill to perpetrators who disseminate the images “with intent to harm the person in the image” Sec. 2917.211(B)(5).**

This limitation downgrades what would otherwise be a robust privacy law – a model for other states - into an ineffective, duplicative, and likely unconstitutional harassment law.

- **Ineffective:** The colloquialism “revenge porn” unfortunately creates the false impression that all perpetrators seek to control, punish, extort, or otherwise inflict harm on their victims. But the abuse is most frequently perpetrated by people who have no specific ill-will toward their victims and may not even know their victims at all: according to CCRI’s 2017 study, **79% of perpetrators did not act with the intent to hurt their victims.**⁶ Limiting the law to perpetrators whose purpose is to harm their victims means that the vast majority of perpetrators can act with impunity, including revenge porn site operators who destroy the lives, careers, reputations, and personal relationships of women for profit; hackers who distribute private, intimate photos of celebrities to provide “entertainment”; and rapists who distribute the recordings of sexual assaults on social media to brag about their exploits.
- **Duplicative:** Ohio already has a law against “telecommunications harassment” (2917.21) that prohibits telecommunications made “with purpose to harass, intimidate, or abuse any person,” and makes it a crime to “knowingly post a text or audio statement or an image on an internet web site or web page for the purpose of abusing, threatening, or harassing another person.” As this law has clearly not provided an effective response to nonconsensual pornography to date, duplicating it will be of little benefit to victims.
- **Unconstitutional:** Prohibiting the dissemination of private, sexually explicit images for the purpose of harming the person depicted while allowing the same act to be committed for other purposes makes the law vulnerable to First Amendment vagueness and underinclusiveness challenges. Cyberbullying statutes in North Carolina and New York with similar motive requirements were recently [struck](#) down on overbreadth and vagueness grounds; Ohio’s own telecommunications act criminalizing communications made with malicious purposes was recently the subject of a First Amendment lawsuit.⁷

2. **The exception for images that are “part of a news report or commentary or an**

⁶ Eaton et al.

⁷ *Plunderbund Media L.L.C. v. DeWine*, 312 F. Supp. 3d 654 (N.D. Ohio 2018)(dismissed for lack of standing).

artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work.” Sec. 2917.211(C)(3).

This extremely broadly-worded exception creates a loophole that can be exploited by virtually any defendant. It will be easy for self-serving defendants to simply claim that the images were part of some news report, artistic, or otherwise “expressive” work.⁸ Without reference to any objective standards of what constitutes such work, this exception threatens to swallow the statute.

III. Recommendations

For the reasons given above, CCRI recommends that the proposed bill be amended by 1. removing the requirement of intent to harm and 2. removing the exception for images that are part of news, artistic, or expressive work. The removal of these provisions would bring Ohio’s law more closely in line with the federal 2017 [ENOUGH Act](#), the 2018 [Uniform Civil Remedies for the Unauthorized Distribution of Intimate Images Act](#), and the 2018 [revision](#) to the Uniform Code of Military Justice addressing nonconsensual pornography.

For more information, please contact:

Dr. Mary Anne Franks, President, Cyber Civil Rights Initiative and Professor of Law, University of Miami School of Law

Phone: (305) 284-5345

Email: mafranks@law.miami.edu

www.cybercivilrights.org

Twitter: @CCRIinitiative

24-Hour Crisis Helpline: 1-844-878-CCRI (2274)

⁸ See Rheana Murray, Art Exhibit Plans to Showcase Celebs' Hacked Photos, ABC News, Sept. 5, 2018, <https://abcnews.go.com/Entertainment/art-exhibit-plans-showcase-celebs-hacked-photos/story?id=25251146>