

New Revenge Porn Crime

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The General Assembly recently enacted a new “revenge porn” statute. [S.L. 2015-250](#). The law actually gives the offense a tamer name: Disclosure of Private Images. The statute takes effect December 1, 2015, and applies to offenses committed on or after that date. Here’s what you need to know about the new crime.

Statute

G.S. 14-190.5A

Elements

A person guilty of this offense:

- (1) knowingly
- (2) discloses an image of another person
- (3) with the intent to
 - (a) coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, *or*
 - (b) cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, *and*
- (4) the depicted person is identifiable from the disclosed image or from information offered in connection with it,
- (5) the depicted person's intimate parts are exposed or the depicted person is engaged in sexual conduct in the disclosed image,
- (6) the person discloses the image without the affirmative consent of the depicted person, *and*
- (7) the person discloses the image under circumstances such that he or she knew or should have known that the depicted person had a reasonable expectation of privacy.

G.S. 14-190.5A(b).

Punishment

If the defendant is 18 or older at the time of the offense, Class H felony. G.S. 14-190.5A(c)(1). If the defendant is less than 18 years old at the time of the offense, a first offense is a Class 1 misdemeanor and a second or subsequent offense is a Class H felony. G.S. 14-190.5A(c)(2) & (3).

Notes

Element (2). To “disclose” means to transfer, publish, distribute, or reproduce. G.S. 14-190.5A(a)(1). The term “image” includes a photograph, film, videotape, recording, digital, or other reproduction. *Id.* at (a)(2).

Element (5). The term “intimate parts” means any of the following naked human parts: genitals, pubic area, anus, or the nipple of a female over the age of 12. G.S. 14-190.5A(a)(3). The term “sexual conduct” means any of the following:

- vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted;
- masturbation, excretory functions, or lewd exhibition of uncovered genitals;
- an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.

G.S. 14-190.5A(a)(6). This is the same definition of sexual conduct that applies with respect to obscenity. G.S. 14-190.1(c).

Element (7). The term “reasonable expectation of privacy” is defined as follows: “When a depicted person has consented to the disclosure of an image within the context of a personal relationship and the depicted person reasonably believes that the disclosure will not go beyond that relationship.” G.S. 14-190.5A(a)(5). “Personal relationship” is defined by reference to G.S. 50B-1(b); it thus means a relationship where the parties:

- are current or former spouses;
- are persons of opposite sex who live or have lived together;
- are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren;
- have a child in common;
- are current or former household members;
- are persons of the opposite sex who are in a dating relationship or have been in a dating relationship.

G.S. 50B-1(b). A dating relationship “is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.” *Id.*

Exceptions. The statute carves out exceptions for:

- images involving voluntary exposure in public or commercial settings; and
- disclosures made in the public interest, including, but not limited to, the reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, medical treatment, or scientific or educational activities.

G.S. 14-190.5A(d)(1) & (2). It also provides an exception for “[p]roviders of an interactive computer service, as defined in 47 U.S.C. § 230(f), for images provided by another person.” *Id.* at (d)(3).

Destruction of images. The court may order the destruction of images made in violation of the statute. G.S. 14-190.5A(e).

Multiple convictions and punishments. Punishment for this offense does not preclude punishment for some other criminal offense that might apply to the conduct at issue. G.S. 14-190.5A(f).

Civil action. Prosecution for this offense does not preclude civil sanctions or remedies. *Id.* In fact, the statute sets out a civil cause of action. G.S. 14-190.5A(g).