

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 792
Committee Substitute Favorable 4/22/15
Senate Judiciary I Committee Substitute Adopted 7/23/15
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Short Title: Privacy/Protection From Revenge Postings.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE PUBLIC FROM REVENGE POSTING ONLINE BY
MAKING IT A CRIMINAL OFFENSE TO DISCLOSE CERTAIN IMAGES IN WHICH
THERE IS A REASONABLE EXPECTATION OF PRIVACY AND TO MAKE
INDECENT EXPOSURE THAT OCCURS ON PRIVATE PREMISES A CRIMINAL
OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 14 of the General Statutes is amended by
adding a new section to read:

"§ 14-190.5A. Disclosure of private images.

(a) Definitions. – The following definitions apply in this section:

(1) Disclose. – Transfer, publish, distribute, or reproduce.

(2) Image. – A photograph, film, videotape, recording, digital, or other
reproduction.

(3) Intimate parts. – The naked genitals, pubic area, anus, or the nipple of a
female over the age of 12.

(4) Personal relationship. – As defined in G.S. 50B-1(b).

(5) Reasonable expectation of privacy. – 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.

(6) Sexual conduct. – Includes any of the following:

a. Vaginal, anal, or oral intercourse, whether actual or simulated,
normal or perverted.

b. Masturbation, excretory functions, or lewd exhibition of uncovered
genitals.

c. 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.

(b) Offense. – A person is guilty of disclosure of private images if, with the intent to
coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, or
with the intent to cause others to coerce, harass, intimidate, demean, humiliate, or cause
financial loss to the depicted person, the person knowingly discloses an image of another
person who is identifiable from the image itself or information offered in connection with the



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1 image, and whose intimate parts are exposed or who is engaged in sexual conduct, when the
2 person knows or should have known that the depicted person has not consented to such
3 disclosure and under circumstances such that the person knew or should have known that the
4 depicted person had a reasonable expectation of privacy. In addition, the court may order the
5 destruction of any image made in violation of this section.

6 (c) Penalty. – A violation of this section shall be punishable as follows:

7 (1) For an offense by a person who is 18 years of age or older at the time of the
8 offense, the violation is a Class H felony.

9 (2) For a first offense by a person who is under 18 years of age at the time of the
10 offense, the violation is a Class 1 misdemeanor.

11 (3) For a second or subsequent offense by a person who is under the age of 18 at
12 the time of the offense, the violation is a Class H felony.

13 (d) Exceptions. – This section does not apply to any of the following:

14 (1) Images involving voluntary exposure in public or commercial settings.

15 (2) Disclosures made in the public interest, including, but not limited to, the
16 reporting of unlawful conduct or the lawful and common practices of law
17 enforcement, criminal reporting, legal proceedings, medical treatment, or
18 scientific or educational activities.

19 (3) Providers of an interactive computer service, as defined in 47 U.S.C. §
20 230(f), for images provided by another person.

21 (e) A violation of this section is an offense additional to other civil and criminal
22 provisions and is not intended to repeal or preclude any other sanctions or remedies.

23 (f) In addition to any other remedies at law or in equity, including an order by the court
24 to destroy any image disclosed in violation of this section, any person whose image is
25 disclosed, or used, as described in subsection (b) of this section, has a civil cause of action
26 against any person who discloses or uses the image and is entitled to recover from the other
27 person any of the following:

28 (1) Actual damages, but not less than liquidated damages, to be computed at the
29 rate of one thousand dollars (\$1,000) per day for each day of the violation or
30 in the amount of ten thousand dollars (\$10,000), whichever is higher.

31 (2) Punitive damages.

32 (3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

33 The civil cause of action may be brought no more than four years after the last disclosure as
34 described in this section."

35 **SECTION 1.1.** Article 5 of Chapter 1 of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 1-51.1. Four years.**

38 No suit, action, or proceeding under G.S. 14-190.5A(d) shall be brought or maintained
39 against any person unless such suit, action, or proceeding is commenced within four years after
40 the last disclosure as described in G.S. 14-190.5A."

41 **SECTION 1.5.** The Joint Legislative Oversight Committee on Justice and Public
42 Safety shall study the issue of improper disclosure of images of people superimposed onto
43 other images exposing intimate parts or depicting sexual conduct. The study shall include
44 whether any existing crimes or civil actions currently apply and whether G.S. 14-190.5A, as
45 enacted by this act, should be amended to include superimposed images. The Joint Legislative
46 Oversight Committee on Justice and Public Safety shall report its findings and any
47 recommendations to the General Assembly by April 1, 2016.

48 **SECTION 2.** G.S. 14-190.9 is amended by adding a new subsection to read:

49 "(a2) Unless the conduct is prohibited by another law providing greater punishment, any
50 person who shall willfully expose the private parts of his or her person in the presence of
51 anyone other than a consenting adult on the private premises of another or so near thereto as to

1 be seen from such private premises for the purpose of arousing or gratifying sexual desire is
2 guilty of a Class 2 misdemeanor."

3 **SECTION 2.1.** G.S. 14-190.9 is amended by adding a new subsection to read:

4 "(a5) Unless the conduct is prohibited by another law providing greater punishment, any
5 person located in a private place who shall willfully expose the private parts of his or her
6 person with the knowing intent to be seen by a person in a public place shall be guilty of a
7 Class 2 misdemeanor."

8 **SECTION 2.3.** G.S. 14-190.9 is amended by adding a new subsection to read:

9 "(a4) Unless the conduct is punishable by another law providing greater punishment, any
10 person at least 18 years of age who shall willfully expose the private parts of his or her person
11 in a private residence of which they are not a resident and in the presence of any other person
12 less than 16 years of age who is a resident of that private residence shall be guilty of a Class 2
13 misdemeanor."

14 **SECTION 3.** This act becomes effective December 1, 2015, and applies to
15 offenses committed on or after that date and to actions initiated on or after that date.