

# A CALL TO ACTION: ENDING “SEXTORTION” IN THE DIGITAL AGE

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**LEGALMOMENTUM**

The Women's Legal Defense and Education Fund



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# FOREWORD

Sextortion. A new word but a very old concept: it is a widespread form of corruption in which sex, not money, is the currency of the bribe. The perpetrator asks for sex instead of cash. Today the crime has become digital and cyber-sextortion is spreading fast.

In 2015, the Thomson Reuters Foundation, in collaboration with the International Association of Women Judges (IAWJ), launched a guide: "Combating Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation." The study outlines laws and practices relating to the crime in nine jurisdictions, spanning six continents. This new report was borne out of that research, and takes a more specific look at the United States and at how sextortion has evolved.

Despite increasing recognition from law enforcement agencies that sextortion exists and that it is indeed on the rise—the United States lacks adequate legal solutions to ensure justice for victims. This leaves women and young girls vulnerable at the hands of those willing to abuse their power, and—increasingly—online predators.

In the United States, in fact, sextortion has proliferated in the digital age. Traditionally, the crime was perpetrated by abusers who knew their victims, but today perpetrators hack into personal computers and smart phones to obtain private information (including sexual images) and then demand sex or more sexual imagery. **Many perpetrators have abused multiple, even hundreds, of victims. Victims are powerless.** When they have not complied, perpetrators have released sexual images to the victims' friends, family members, congregations, teachers, co-workers, and the world at large, via the Internet.

Women and girls are disproportionately impacted by cyber-sextortion. Predators exploit digitally-savvy children and teenagers, often by pretending to be peers on social networking sites. Using false identities, offenders manipulate children and teenagers to give them information or images that the victims would not want friends, family or their school community to know about. Predators then use these images to demand sex or more sexual images.

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The impact of all forms of sextortion on victims' lives is huge: long-lasting psychological impact and sometimes irreversible reputational harm. Many victims are traumatized because they will never know when and where sexual images of them will turn up, or who has viewed them. Victims feel ashamed and embarrassed, and often do not know where or how to seek help.

This report calls for a recognition of this growing sex crime and for the adoption of appropriate legal measures to combat sextortion in the United States. It provides pathways for prosecutors to use existing statutes to bring perpetrators to justice, and suggests practical amendments to these statutes to capture the various components of sextortion and to ensure that no predator escapes punishment. It also recommends that punishment reflects the nature and scale of the offense committed.

This timely and important work is thanks to the tireless efforts of Legal Momentum, and to the commitment of Orrick, Herrington, & Sutcliffe LLP to this cause. I am very grateful to both organizations for their significant investments of time, expertise, and the passion they have put in this report.

We are confident that Legal Momentum will use this research to best advocate for the right legal solutions to prosecuting and eradicating sextortion. We also hope that this report will serve as a call to action for lawmakers, law enforcement, attorneys, judges, and advocates to name this crime and to provide pathways to justice for victims.

Our ultimate goal is to strengthen criminal justice systems and to ensure that victims are protected and empowered.

A handwritten signature in black ink that reads "M. Villa". The signature is written in a cursive style and is underlined with a thin horizontal line.

Monique Villa

CEO, Thomson Reuters Foundation

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# EXECUTIVE SUMMARY



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Judges demand sex in exchange for visas or favorable custody decisions, landlords threaten to evict tenants unless they have sex with them, supervisors condition job security on sex, and principals condition student graduation on sex. These are only a few faces of "sextortion." Throughout the world, those in power extort vulnerable women and girls by demanding sex, rather than money. Victims have no choice but to comply. Noncompliance leads to life-altering and irreversible harm, such as losing one's children, deportation, homelessness, incarceration, or unemployment.

In the United States, sextortion has proliferated in the digital age. Whereas traditionally, sextortion was perpetrated by abusers who knew their victims, today anyone with a computer keyboard can perpetrate cyber-sextortion and exert power over strangers.

Perpetrators hack into personal computers and use deceptive practices, obtain private information (including sexual images) and then demand sex or more sexual imagery. Many perpetrators have victimized multiple, even hundreds, of victims. Victims are powerless. When victims have not complied, perpetrators have released sexual images to the victims' friends, family members, peer groups, religious congregations, teachers, co-workers, and the world at large, via the Internet.

Women and girls are disproportionately impacted by cyber-sextortion. Predators exploit digitally-savvy children and teens who spend hours each day online, often by pretending to be peers on social networking sites. Using false identities, offenders manipulate children and teens to give them information or images that the victims would not want friends, family or their school community to know about. Predators then use these images to demand sex or more sexual images.

The impact of all forms of sextortion on victims' lives is immeasurable: long-lasting psychological impact and irreversible reputational harm. Many victims are traumatized because they will never know when and where sexual images of them will turn up, or who has viewed them. Victims feel shame and embarrassment and often do not know where or how to obtain help.

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As the nation's oldest advocacy organization devoted to advancing the rights of women and girls, Legal Momentum issues this report to raise awareness about sextortion in the United States so that individuals, parents, the broader public, law enforcement and elected officials, working together, can combat it.

Legal Momentum, through this report, also exposes the law's inadequacy to address this sex offense. Even though everyone who owns a computer is vulnerable to sextortion, United States law does not expressly prohibit it. Legal Momentum calls upon state and federal legislators to take immediate action to remedy this fast-growing sexual coercion. Legal Momentum calls the public, law enforcement and legislators to action to fight sextortion by:

- Educating the public, especially children and teens, about the danger and prevalence of sextortion, especially cyber-sextortion;
  - Ensuring that schools incorporate sextortion awareness in their Internet safety curricula;
  - Amending existing extortion, cybercrime, sex offense and domestic violence statutes to expressly criminalize sextortion;
  - Amending sentencing guidelines to allow for enhanced sentencing for these heinous and devastating crimes; and
  - Amending sex offender registration and notification laws to allow for increased monitoring of sextortion offenders.
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# INTRODUCTION



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During his thirty-three year tenure as an elected district attorney in Louisiana, Harry Morel coerced at least twenty women into having sex with him by promising leniency in criminal charges that had been brought against them or their close family members. He also demanded sex in exchange for enforcing child support orders. In April 2016, Morel pled guilty to only one count of obstruction of justice. Even though the FBI Special Agent in charge of the office that investigated Morel characterized him as a "sexual predator," he was never charged with any sex crimes.<sup>1</sup>

In 1992, Judge David W. Lanier, a family court judge in Tennessee, was prosecuted for coercing several female court employees, and a mother whose child custody case he was deciding, into having sex with him.<sup>2</sup> Judge Lanier challenged his conviction all the way to the United States Supreme Court, arguing that the federal statute under which he was convicted did not notify him that his behavior was criminal.<sup>3</sup> Fortunately, he did not prevail.

These cases are just a tiny sampling of "sextortion" acts. The only thing unique about these examples is that the perpetrators were caught and successfully prosecuted. Most acts of sextortion go unnoticed and unpunished, however. Every day, employers, teachers, public officials and others coerce mostly women and girls to have sex with them or suffer irreparable consequences. For example, during Hurricane Katrina, which devastated New Orleans and other Gulf Coast communities, many survivors were stranded on rooftops for days without food and water. Many were injured. Some rescue workers in helicopters and boats exploited desperate and vulnerable female survivors by making their rescue conditional on the women baring their breasts. Certain rescue workers refused to rescue some women who did not comply.<sup>4</sup>

In 2008, the International Association of Women Judges ("IAWJ") recognized "sextortion" as a widespread form of public corruption in which sex, rather than money, is the currency of the bribe or extortion. In a 2015 report, the IAWJ examined sextortion globally and concluded that many countries' legal frameworks were inadequate to appropriately punish those committing sextortion.<sup>5</sup>

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This is also true in the United States. Recently, the term "sextortion" has been used in the United States with increasing frequency—particularly by the media and law enforcement—to describe extortion for sex or sexual images committed over the Internet. Women, children and teens are most vulnerable to this cyber-sextortion. Over the Internet, traditional authority figures and government officials are not the only individuals in a position to exert power over others. In-person relationships are no longer needed to force someone to submit to a sexual act or to send sexual imagery. Now, with just a few mouse clicks, a stranger can extort sex, or sexual images, from multiple victims who are thousands of miles away from both the perpetrator and each other.

This report addresses the prevalence of sextortion in the United States, a country that the IAWJ did not discuss in its 2015 report. This report demonstrates that, in the United States, even though law enforcement and the media have already begun to use the term "sextortion," it is not a term recognized by state and federal law within the United States. As a result, sextortion victims are left with either no recourse or inadequate solutions, despite the great and lasting harm they suffer at the hands of sextortion perpetrators.

With this report, Legal Momentum calls on elected officials and the public to fill this legal gap. Legal Momentum proposes legislative remedies essential to prosecuting sextortion and helping to eradicate it. To combat, prevent, and punish sextortion, sextortion must be appropriately defined and clearly prohibited by law. Major legislative reform is not necessary to criminalize sextortion, however. Simply adding the words "sexual acts" and "sexually explicit images" to existing federal and state extortion and cybercrime laws would eliminate many of the barriers that now exist to identifying, prosecuting, and punishing all forms of sextortion.

But law reform is not the only solution. Only an informed public can recognize sextortion, in all its forms, and report it if they or someone they know is victimized. Public education of the myriad ways sextortion is perpetrated (both online and in-person) is essential to preventing sextortion. This report lays out a road map that parents, teachers, individuals and the community at large can follow immediately to protect themselves, but especially children and teens, against sextortion. It also provides information for how to report acts of sextortion.

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# SEXTORTION IN THE UNITED STATES



# SEXTORTION IN THE UNITED STATES

## I. SEXTORTION IS PERPETRATED THROUGHOUT THE UNITED STATES

### A. Persons in Power Demand Sex

In the United States, as in countries throughout the world, persons in power all too frequently use that power to demand sex from vulnerable individuals over whom they have authority. Certain types of relationships lend themselves to sextortion. Common scenarios include:

- Employers conditioning career opportunities on sexual acts from their employees;<sup>6</sup>
- Teachers or professors conditioning grades on sexual acts from their students;<sup>7</sup>
- Judges conditioning favorable outcomes in cases on sexual acts from litigants;<sup>8</sup>
- Emergency personnel, including police officers, detaining people until they have sex or offering to waive tickets or jail time in exchange for sex;<sup>9</sup>
- Government officials withholding licenses, visas, or permits in various contexts until they obtain sexual favors;<sup>10</sup> and
- Ordinary citizens obtaining sexually explicit images of an individual and then threatening that individual with release of those images unless the individual submits to sexual acts.<sup>11</sup>

These are just a few examples. Sextortion can be perpetrated in any situation in which there is an imbalance of power. With the proliferation of Internet use, anyone can gain influence over another individual to coerce them into unwanted sexual encounters.

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## B. Perpetrators Use the Internet to Gain Power and Exploit Others

### 1. Sextortion Has Exploded in the Internet Age

The global availability of the Internet leaves everyone vulnerable to sextortion offenders, who now need only to gain access to another's computer in order to exert power. Accordingly, this report's definition of sextortion encompasses cyber-sextortion. Throughout the United States, hackers are victimizing strangers—especially children and teens—by deceiving them into sharing sexual images and performing sexual acts. Then, the hackers demand additional sexually explicit material or sex in exchange for not distributing the original sexual images.<sup>12</sup> Many of these hackers obtain the original sexual content without the victims' knowledge by hacking into the victims' computers. Cyber-sextortion also allows perpetrators to reach many more victims than in-person sextortion perpetrators.

The case of Lucas Michael Chansler provides an unnerving example of a cyber-sextortion perpetrator's ability to inflict far-reaching harm using the Internet. Chansler made contact with hundreds of teenage victims through social networking sites, using fake personas to dupe young girls into exposing themselves via webcams while he surreptitiously recorded them. Chansler then threatened to release those images to the victims' friends and families to extort the girls for more sexually explicit images and videos. Chansler victimized approximately 350 girls in this manner.<sup>13</sup> Chansler's conduct devastated his victims; some dropped out of school and others tried to end their young lives.<sup>14</sup>

In July 2015, unable to identify approximately 250 of his victims, the FBI asked the public for help identifying Chansler's victims. Those who were identified were located across the United States, Canada and the United Kingdom.<sup>15</sup> As the Chansler case demonstrates, sextortion victims, like other sex crimes victims, often do not report the threats they receive from perpetrators.<sup>16</sup>

The cases discussed below are a sampling of the few prosecuted sextortion cases in the United States. Because there is no statute that clearly addresses sextortion, prosecutors have used other statutes to prosecute perpetrators. None of those statutes are adequate. They do not recognize the sexual nature of sextortion, nor do they embrace the full effect of the immense and often irreparable harm caused by sextortion.

## 2. Recently Prosecuted Cases Demonstrate the Need for Explicit Sextortion Statutes

### *Michael C. Ford: Federal Government Employee Targeted College Women*

In 2015, United States State Department employee Michael C. Ford used federal government computers to target college students by threatening to, among other things, reveal sexually explicit images he hacked from their computers unless they complied with his demands for more sexual content.<sup>17</sup> Federal prosecutors recognized his conduct as a "sextortion scheme" and he was charged with cyberstalking, computer fraud and abuse, and wire fraud.<sup>18</sup> He was not charged with any sex crimes.

### *Luis Mijangos: Took Over Girls' and Women's Computers*

Luis Mijangos stole sexually explicit images and videos from girls' and women's computers and blackmailed them into sending him sex tapes. Mijangos was able to access the sexually explicit content initially by uploading videos and music to peer-to-peer networks that contained malicious hacking software that gave him access to over 100 computers.<sup>19</sup> Mijangos then hacked into the webcams and microphones on victims' computers to obtain nude photographs and record their personal conversations. He used these images and recordings to threaten them, demanding even more sexually-explicit images. Mijangos even posted sexually explicit pictures of one victim on her friend's social media page.<sup>20</sup>

Mijangos pled guilty to only computer-based offenses of computer hacking and wiretapping. At the sentencing hearing, a victim summarized the pain Mijangos inflicted on her by stating: "He haunts me every time I use the computer . . . You don't have to be in jail to feel trapped."<sup>21</sup>

### *Jared James Abrahams: Targeted 150 Victims*

Jared James Abrahams hacked into the email accounts, social media pages, and computers of approximately 150 victims, including at least one child.<sup>22</sup> Abrahams started with women he knew, but later targeted strangers. After identifying a target, Abrahams used the victims' webcams to photograph them without their permission.<sup>23</sup> Abrahams then threatened to publicly post the compromising photos or videos to the victims' social media accounts unless they either sent more nude photos or videos or engaged in a Skype session with him.<sup>24</sup> A press release from the FBI/United States Attorney's Office demonstrates Abrahams' cruelty:

**In one case, a victim ... reluctantly complied with Abrahams' demands to converse via Skype. According to the complaint, [the victim] wrote, 'I'm downloading Skype now. Please remember I'm only 17. Have a heart,' to which Abrahams responded 'I'll tell you this right now. I do not have a heart. However I do stick to my deals. Also age doesn't mean a thing to me.'**<sup>25</sup>

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Abrahams pled guilty to computer hacking and extortion, but not to any sex crimes.<sup>26</sup>

*Richard Finkbiner: Forced up to 153 Girls and Women to be his "Cam Slaves"*

For almost two years, Richard Finkbiner deceived minors into engaging in sexual acts, which he secretly recorded.<sup>27</sup> Finkbiner victimized between twenty and 153 young women and children by, among other things, forcing them to show him their naked bodies, wear demeaning clothing and write his name (an alias) on their skin.<sup>28</sup> Finkbiner "threatened to publish the videos on pornographic websites unless the victims became his 'cam slaves' by engaging in more such activities."<sup>29</sup> After learning that one of his victims attempted suicide, Finkbiner responded in an email: "Glad I could help." Finkbiner later pled guilty to multiple charges, including child exploitation, extortion and possession of child pornography.<sup>30</sup>

## II. SEXTORTION CAUSES SERIOUS HARM TO VICTIMS

In the wake of sextortion, victims suffer devastating and often long-lasting harm. Sextortion is coerced sex. While the sextortion perpetrator typically uses no *physical* force, as is often the case with traditional forms of sex abuse, the sextortion victim by no means voluntarily consents to having sex or sending sexual images. Rather, the victim acquiesces out of necessity and fear that the perpetrator will carry out his threats. Sextortion victims are therefore like other sexual assault victims.

Victims of sexual assault suffer a range of debilitating symptoms, including post-traumatic stress disorder, anxiety, depression, nightmares, flashbacks, difficulty concentrating, and unrelenting feelings of self-blame, shame, embarrassment, fear, sadness, vulnerability, isolation, lack of control, and numbness.<sup>31</sup> Research documents that rape victims are six times more likely to develop post-traumatic stress disorder and three times more likely to suffer a major depressive episode than women who have never been crime victims.<sup>32</sup>

Cyber-sextortion victims whose images are published on the Internet suffer harm throughout their lives. It is impossible for those victims to know where their images will surface. They cannot permanently retrieve them. They are re-victimized every time someone views them.

A National Center for Missing and Exploited Children (NCMEC) analysis of cyber-sextortion reports received between October 2013 and June 2015 found that 18% of child cyber-sextortion victims experienced negative psychological consequences, such as hopelessness, fear, anxiety and depression. In 5% of cyber-sextortion reports, the child victims had engaged in self-harm, or expressed suicidal thoughts or actions.<sup>33</sup>

As such, the harm caused by cyber-sextortion seems comparable to the harm caused by child pornography. For more than three decades, the United States Supreme Court has recognized the devastating impact of child pornography on the "physiological, emotional, and mental" well-being of the children used as subjects in the images.<sup>34</sup> In particular, the Court has long understood that "[b]ecause the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place."<sup>35</sup> As a result, these victims are likely to experience feelings such as loss of control, powerlessness, helplessness, shame and fear.<sup>36</sup>

Adult victims of cyber-sextortion also suffer significant adverse mental health consequences, long-lasting embarrassment and invasion of privacy.<sup>37</sup> Victims experience these harms whether the image was created during a sexual assault, was a private image that was obtained and shared through surreptitious, coercive or abusive measures, or was consensually created and shared and then distributed without consent.<sup>38</sup>

One cyber-sextortion victim, identified as "Elizabeth," had nude images stolen from her email account. The sexually explicit images were distributed on the Internet and have been widely shared since, appearing on 500 websites of which she is aware. She has been repeatedly harassed by individuals who viewed her images. Among the harms that "Elizabeth" suffers are feelings of humiliation, lack of control, and a diagnosis of post-traumatic stress disorder.<sup>39</sup> The weight of this harm permeates "Elizabeth's" life. As she described, "[y]ou're denied the right to recast yourself in the image you want to be cast. It's something that you always carry with you and you either learn to live with it or you stop existing ... I live, I'm obviously surviving, but it's not a full life."<sup>40</sup> The pervasive harm that sextortion victims suffer highlights the need for expressly criminalizing this conduct.

### **III. PROSECUTORS AND COURTS NEED EXPLICIT STATUTORY AUTHORITY TO HOLD OFFENDERS ACCOUNTABLE CONSISTENTLY AND IN A MANNER THAT REFLECTS THE SEXUAL NATURE OF SEXTORTION**

Because sextortion is not independently codified as a crime, prosecutors either fail to prosecute sextortion or use existing statutes that do not fully capture the sexual nature of sextortion or the severe harm it causes victims. Because sextortion is not codified, despite prosecutorial efforts, some sextortion cases have been dismissed.

#### **A. Worst Case Scenario: Clear Sextortion Cases Have Gone Unpunished**

Although faced with clear acts of sextortion, as defined above, some courts have dismissed cases because criminal statutes do not specifically contemplate acts of sextortion. For example, in *State*

*v. Thompson*, the Montana Supreme Court upheld the dismissal of a case where a male high school principal threatened to prevent a female student from graduating unless she complied with his sexual demands.<sup>41</sup> The principal was charged with sexual intercourse "without consent." Those charges were dismissed because his actions were not explicitly prohibited by Montana law. Because the principal never used *physical* force or the "threat of imminent death, bodily injury, or kidnapping" in his interactions with his student, he could not be prosecuted.

This clear abuse of power to compel nonconsensual sexual intercourse went unpunished. Upholding the dismissal of the case, the Montana Supreme Court noted that "[t]his case is one of considerable difficulty for us[,]” explaining that “[i]f we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so.”<sup>42</sup> The Montana Supreme Court, in so many words, advocated for a separate sex crime of sextortion to ensure that perpetrators of sex crimes like the principal can be prosecuted and convicted.

Similarly, in May 2015, Cameron Wiley posed online as a 15-year-old girl and persuaded a female teenage victim to send nude photos to him through social media. After she complied, Wiley threatened to post the sexually explicit photos unless the victim provided more and made demeaning demands such as “You will call me ‘Master.’” The victim stated: “I was afraid that if it ended up on the Internet, you know, my reputation would be ruined ... I just remember on a daily basis just sitting in my room and crying.”<sup>43</sup> The victim eventually contacted local police, and Wiley was later charged with misdemeanors under Wisconsin state law, such as: “Threats to Communicate Derogatory Info” and “Attempted Threats to Communicate Derogatory Info.”<sup>44</sup>

Following a guilty plea, Wiley was sentenced to only one year of probation. Prosecutors admitted that they were forced “to become pretty creative in finding statutes that deal with this” because “[t]here is no such thing as ‘sextortion’ in Wisconsin’s criminal law books.”<sup>45</sup> Similar to the Montana case, if a sextortion statute existed, prosecutors would have a clear path to addressing this crime and would have been able to pursue more appropriate sex crime-related charges.

## B. Sextortion as a Form of Extortion

In some instances, sextortion conduct has been charged as a form of “extortion” under 18 U.S.C. § 875(d), but only one court has formally analyzed the applicability of § 875(d) to those charges. The text of § 875(d) states:

Whoever, with intent to extort from any person . . . any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.<sup>46</sup>

In *United States v. Petrovic*, the Eighth Circuit affirmed a conviction under § 875(d) in a clear case of *sextortion* charged as *extortion*.<sup>47</sup> In *Petrovic*, the victim's ex-husband compiled sexually explicit text messages, photographs, and videos of his wife during their marriage.<sup>48</sup> Although the victim willingly sent some of the texts and images to her former husband during their marriage, she did not send all of the sexually explicit images in his arsenal. Rather, her ex-husband had covertly filmed their sexual intercourse. He ensured that the victim was identifiable in the videos he secretly recorded by refusing to turn off the lights, removing the sheets, and directing the victim's face and genitalia towards a concealed camera.<sup>49</sup> When the victim informed her former husband that she was ending their relationship, he threatened to release the sexually explicit texts, photos, and videos unless she continued the relationship.<sup>50</sup>

When the victim ended the relationship, her former husband carried through on his threats. He posted dozens of sexually explicit photos to a website and mailed dozens of postcards of the victim wearing few or no clothes that contained derogatory language (such as: "I am just a whore 4 sale."). The mailings and postings contained links to a website where the victim's former husband stored his trove of sexual images and videos.<sup>51</sup> Additionally, the victim's husband sent "enlarged photographs" of the victim engaging in various sexual acts to the victim's family and boss.<sup>52</sup> Before long, "almost everyone [the victim] knew became aware of the site."<sup>53</sup>

A grand jury indicted the victim's former husband for several crimes, including extortion under 18 U.S.C. § 875(d).<sup>54</sup> Over the defendant's objection, the district court instructed the trial jury that "a 'sexual relationship' could constitute a 'thing of value' one can intend to extort for purposes of conviction under § 875(d)" and the defendant was convicted.<sup>55</sup> The Eighth Circuit affirmed, holding that a "sexual relationship" can constitute a "thing of value."<sup>56</sup>

Since the Eighth Circuit's decision, some prosecutors have charged sextortion acts using the extortion statute, 18 U.S.C. § 875(d). As discussed above, in May 2015, prosecutors charged United States State Department employee Michael C. Ford with extortion, among other charges, for hacking into victims' personal computers, obtaining explicit pictures, and using those pictures to

blackmail his victims.<sup>57</sup> In *United States v. Abrahams*, also discussed above, prosecutors charged the defendant with extortion for hacking into his victims' computers, obtaining nude photographs and then threatening to publish the images unless the victims sent additional nude photographs or videos or performed sexually explicit acts during a Skype session.<sup>58</sup> He pled guilty to computer hacking and extortion.<sup>59</sup>

There is no guarantee that other prosecutors and courts will follow this lead, however. Indeed, the Ninth Circuit has held just the opposite, finding that, in the context of another criminal statute, intangible items cannot constitute a "thing of value."<sup>60</sup> Because there is no guarantee that courts will recognize acts of sextortion as extortion, sextortion has to be expressly criminalized if it is to be adequately punished.

### C. Sextortion Prosecuted as Computer Hacking

Because sextortion is increasingly committed using the Internet, perpetrators have been prosecuted under the growing number of cybercrime-related statutes. Although hacking into a victim's computer and stealing sexually explicit images likely falls under most computer hacking statutes, those statutes do not address the second and more heinous prong of sextortion: the sexual abuse. As a result, sextortion perpetrators are not prosecuted or penalized for the full extent of their criminal conduct.

For example, Luis Mijangos, discussed above, was sentenced to six years in prison after pleading guilty to charges of computer hacking and wiretapping.<sup>61</sup> The defendant's crimes, however, went far beyond intrusion into his victims' computers. Mijangos stole sexually explicit images and videos from the computers of at least 230 victims and blackmailed them into sending him additional sex tapes. Recognizing this, the sentencing judge described his actions as "psychological warfare."<sup>62</sup> Yet his sentence does not reflect the full extent of his harm.

Similarly, Karen "Gary" Kazaryan was prosecuted for hacking into the email, Facebook, and Skype accounts of at least 350 victims. He threatened to post the sexually explicit photos he stole unless the victims provided additional explicit photos and videos. He pled guilty to computer hacking and aggravated identity theft, but not to a sex crime. He was sentenced to only five years in prison. At his sentencing, the judge referred to the defendant as a "cyber-terrorist."<sup>63</sup>

#### D. Sextortion Prosecuted Under Child Pornography Statutes

The widespread use of the Internet by children and teens, in particular social media sites, makes minors easily accessible to predators.<sup>64</sup> Moreover, children and teens are more likely to comply with the coercive demands of perpetrators for fear of being exposed to their parents or peers. Indeed, Lucas Michael Chansler, discussed above, told authorities that he targeted teenage girls, as young as thirteen, because adults were "too smart" to fall for his scheme.<sup>65</sup> NCMEC found that, according to the reports of sextortion against children received on their CyberTipline between October 2013 and June 2015, the average age of the child victims was fifteen years old. Further, the sextortion reports received by NCMEC during that time period revealed that in 76% of the cases, the offender's primary objective was to acquire additional, and often more explicit, sexual content of the minor victim.<sup>66</sup>

Existing federal and state child pornography laws provide an avenue for prosecutors to pursue charges against some sextortion offenders. Federal law defines child pornography as any visual depiction of sexually explicit conduct involving a minor.<sup>67</sup> Federal laws such as 18 U.S.C. § 2251(a),<sup>68</sup> Sexual exploitation of children; 18 U.S.C. § 2252,<sup>69</sup> Certain activities relating to material involving the sexual exploitation of minors; and 18 U.S.C. § 1470,<sup>70</sup> Transfer of obscene material to minors can be applied to acts of sextortion that involve images of children.

Statutorily prescribed mandatory minimum incarceration periods upon conviction for these crimes provide severe penalties.<sup>71</sup> Additionally, convictions under federal and state child pornography laws trigger sex offender registration obligations.<sup>72</sup> Therefore, when these statutes are applicable to sextortion conduct, courts are able to mete out sentences that reflect the sexual nature of these crimes and the lasting harms this conduct has on victims.

However, existing child pornography laws fail to provide a legal basis to hold all cyber-sextortion offenders accountable for their actions. These laws are not available to prosecute cyber-sextortion acts committed against adults. Child pornography laws also do not take into account the full harm caused to victims. Additionally, the use of these statutes to prosecute cyber-sextortion offenders of minor victims do not always encompass the full range of conduct committed by the offenders, in particular the coercion and manipulation to provide such images. These gaps highlight the need for uniform, explicit legislation that encompasses any and all elements of sextortion.

#### E. The Critical Need for Legislative Reform

Although the cases described above demonstrate that sextortion can be successfully prosecuted under a few existing statutes, there is no legal mechanism for consistent prosecution of these offenses. Justice for sextortion victims should not hinge on the fortuitous pairing of creative prosecutors and

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judges who are willing to read extortion and other statutes broadly. Just as important, with a clear legislative mandate prohibiting sextortion, prosecutors will be less likely to exercise their prosecutorial discretion to not pursue any charges against perpetrators because of the lack of appropriate statutory authority. Sextortion needs to be expressly codified to guarantee both that victims know that what they are being subjected to is a crime, and that perpetrators are punished for the full range of their conduct.

Consistent application of the law to a common set of facts or conduct is essential to a fair criminal justice system. Indeed, criminal statutes must provide "fair warning ... to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible, the line should be clear."<sup>73</sup>

When a criminal law does not provide "fair warning," it is vulnerable to a constitutional challenge for "vagueness." The touchstone of the vagueness doctrine is "whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that defendant's conduct was criminal."<sup>74</sup> Ambiguity in a criminal statute will be resolved so that the statute applies "only to conduct clearly covered."<sup>75</sup> Further, "due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope."<sup>76</sup> As such, to avoid challenges to sextortion convictions and ensure that sextortion conduct is not overlooked by the criminal justice system, sextortion must be specifically incorporated into existing criminal statutes as proposed below.

## IV. MAKING SEXTORTION ILLEGAL IS THE FIRST STEP TO STOPPING SEXTORTION

### A. Historical Examples of Deterrence Through Legislation

Naming sextortion and enacting criminal legislation to prohibit it are the first steps to deterring this harmful conduct. Historically, legislation has paved the way for deterrence and social change in a number of contexts:

**Title VII:** Title VII's prohibition on discrimination in the workplace<sup>77</sup> has had a positive effect on gender equality:

- Equal Employment Opportunity Commission: "... the EEOC has worked successfully to advance its mission to *stop and remedy unlawful employment discrimination* so that the nation can realize the vision of Title VII and of the EEOC:

*justice and equality in the workplace. Never before has our nation enjoyed greater inclusivity in the workplace and better reflected the diversity of the American people.*"<sup>78</sup>

- National Women's Law Center: "Title VII has opened up a world of opportunity for women in the workplace. In 1964, women made up only 35% of the workforce. Pregnant workers were often kicked out of the workplace the moment they started showing. Women were limited to certain occupations based solely on the fact that they were women. Today, women make up half of the workforce and 40% are sole or primary breadwinners for their families."<sup>79</sup>

**VAWA (the Violence Against Women Act):**<sup>80</sup> Since the 1994 passage of the Violence Against Women Act (VAWA), the federal law that identified domestic violence as a crime and allocated public monies to combat it, there has been a significant decrease in domestic violence. Since VAWA's enactment, intimate partner violence in the United States declined from 2.1 million reported victimizations in 1994 to 907,000 in 2010 — a decline of 64%.<sup>81</sup> VAWA has also generated laws in over forty states that require prosecution of perpetrators of domestic violence and enforcement of sanctions against them.

**Anti-bullying:** As reported by the Gay, Lesbian & Straight Education Network, the enactment of anti-bullying legislation and policies that specifically identify sexual orientation and gender identity/expression as warranting protection has led to: (i) a decrease in anti-gay bullying; (ii) an increase in the reporting of anti-gay bullying; and (iii) an increase in staff intervention in anti-gay bullying incidents.<sup>82</sup>

**Driving Safety Laws:** Education alone is not enough to change behavior. In the driving safety context, for example, seat belt laws led to much greater use of seat belts than fifteen years of educational campaigns.<sup>83</sup> Similarly, drunk driving deaths decreased dramatically when the drinking age was raised from eighteen to twenty-one nationwide, and when the maximum blood alcohol level was lowered to .08 in all fifty states.<sup>84</sup> Education alone was not nearly as effective.<sup>85</sup>

## **B. Sextortion Legislation Will Educate the Public, Increase Reporting and Deter Criminal Behavior**

Through criminalization, society sends a clear message that condemns certain particularized wrongful conduct.<sup>86</sup> This leads to an increase in reporting, which eventually increases both public and private resources devoted to deterring crimes. Laws empower survivors of abusive conduct and inform victims that society supports them and believes that they have been seriously harmed.<sup>87</sup> This is particularly important for sex crimes victims, who often feel shame and isolation after being preyed upon.<sup>88</sup>

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Sextortion is the nexus between corruption and sexual abuse. Both corruption and sexual abuse can thrive only to the extent that the actions can be hidden. For example, popular entertainer Bill Cosby, whose successful career spanned decades, is alleged to have drugged and raped scores of women. He was able to avoid criminal scrutiny through out-of-court settlements in lawsuits brought by his accusers, which contained very stringent confidentiality clauses. When, however, in 2015, fifty women publicly accused Cosby of sexual abuse, his career was ruined and he was criminally charged with a sex offense.<sup>99</sup> As negative publicity mounted, more victims came forward and accused Cosby of sexual abuse. As a result, colleges and universities revoked honorary degrees they had bestowed on Cosby and television networks cancelled their contracts with the comedian.<sup>90</sup> Similarly, when former San Diego Mayor Bob Filner was accused publicly of sexual harassment by eighteen women in 2013, he resigned within six weeks of the first accusation.<sup>91</sup>

Criminalizing sextortion will have similar effects, as victims will feel more comfortable speaking out publicly against perpetrators and exposing this crime. Education about the risks and prevalence of Internet sextortion will

Over a six-month period in 2014, thirteen women in Oklahoma were coerced into engaging in sexual conduct under the threat of arrest.<sup>92</sup> The serial offender who victimized these women did not lurk in dark alleys, but operated openly, proudly displaying his uniform and shield. Police Officer Daniel Holtzclaw preyed upon low-income women of color, most with criminal records, calculating that these women were unlikely to report him, and even less likely to be believed.

A teenage victim was raped her on her mother's porch.<sup>93</sup> Another victim was handcuffed to a hospital bed when Holtzclaw groped her breasts and vagina and coerced her to submit to oral sex to avoid criminal charges.<sup>94</sup> A grandmother driving at night was illegally pulled over. With his gun visible, Holtzclaw forced her to give him oral sex under threat of arrest for a crime she never committed.<sup>95</sup>

To his great surprise, this victim reported Officer Holtzclaw. The subsequent investigation uncovered sexual assaults against a dozen other women. In December 2015, Officer Holtzclaw was sentenced to a 263-year prison term for his offenses.<sup>96</sup>

also help protect children and teens in particular. A clear prohibition of sextortion will make it easier for parents, schools, religious institutions and peer groups to openly discuss safe Internet practices and sextortion with children and encourage them to report attempted cyber-sexortion rather than being coerced into sexual activity.

### C. Laws Must Adapt to Address Crimes Made Possible by Changing Technologies

The terms "cyberstalking" and "cyber-harassment" did not exist twenty years ago. As those behaviors increased with the advent and proliferation of new technologies, criminal laws were enacted to address this illegal behavior. As a result, all fifty states have enacted or are in the process of enacting statutes prohibiting cyberstalking and cyber-harassment.<sup>97</sup>

In the same vein, current laws should be modified to encompass the increase in sextortion incidents. These modifications would not require great effort and can be achieved, in most cases, by adding either one word or one phrase to the definition of existing criminal extortion and cybercrime statutes ("**sexual acts**" and/or "**sexually explicit images**").

## V. MODEL SEXTORTION LEGISLATIVE PROVISIONS

Currently, sextortion is not legally recognized, or expressly criminalized, as a crime in the United States. Even though some creative prosecutors and judges have used existing criminal statutes to prosecute sextortion perpetrators, those instances are in the minority. To ensure that victims are fully protected, legislative reform is needed that specifically covers sextortion. Fortunately, minor modification of existing statutes would codify sextortion and protect victims.<sup>98</sup>

### A. Federal and State Extortion Statutes

The federal extortion law discussed above in Section IV, 18 U.S.C. § 875(d), could easily be amended to ensure that it explicitly covers sextortion. The statute could be amended to add the language in bold:

Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, **including sexual acts and sexually explicit images**, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

While the Eighth Circuit has held that sexual acts constitute a "thing of value," other courts may not agree. Making sextortion explicitly prohibited would ensure that sextortion cases are prosecuted, valid cases are not dismissed, or that convictions under extortion laws are not overturned on appeal.

Because not all sextortion cases will be prosecuted federally, it is critical for states to amend their extortion laws to encompass sextortion. The American Law Institute can assist states in doing so by amending their Model Penal Code's definition of "property" within the extortion statute. Currently, the Model Penal Code defines property within the crime of "theft by extortion" as:

[A]nything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power.<sup>99</sup>

By amending this definition of "property" to include sexual acts and sexually explicit images, state extortion statutes would explicitly cover the crime of sextortion. The new definition would read:

[A]nything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, **sexual acts, sexually explicit images**, captured or domestic animals, food and drink, electric or other power.

States adopting language based on the Model Penal Code would need to add only five words to their existing statutes to ensure they cover sextortion.

Another way to address sextortion is to amend the definition of theft by extortion to indicate that the perpetrator is guilty of said crime if he obtains property or anything else of value, "**including sexual acts or sexually explicit images**" from a victim by making one of the threats enumerated within the statute.<sup>100</sup>

Sextortion perpetrators should be subject to increased prison sentences to promote deterrence and to accurately reflect the sexual nature of this offense and the harm it causes victims. Section 2B3.2 of the United States Sentencing Commission's Guidelines Manual contains a two-level sentencing enhancement for extortion convictions:

"[i]f the offense involved an express or implied threat of death, bodily injury, or kidnapping."<sup>101</sup> The Commission should address sextortion by simply amending this enhancement to include "**or threats related to any form of sexual acts, content or media, such as sexual favors and sexually explicit images.**" Given that the Commission's Guidelines are considered by the United States Supreme Court to be "the starting point and initial benchmark" in federal sentencing, explicitly incorporating sextortion into the Guidelines would have a meaningful impact on courts' ability to mete out appropriate punishment for these crimes.<sup>102</sup>

## B. Federal and State Cybercrime Statutes

Recently reported and prosecuted cases of cyber-sextortion indicate these devastating acts are being increasingly committed through computer hacking. However, current cybercrime statutes do not include elements that reflect the full nature of cyber-sextortion. Under the Computer Fraud and Abuse Act, it is a federal crime to "intentionally access[] a computer without authorization... and thereby obtain[]... (A) information obtained in a financial record... (B) information from any department or agency of the United States; or (C) information from any protected computer."<sup>103</sup> To explicitly address cyber-sextortion, this statute should be amended to read "intentionally access[] a computer, website, or cloud-based storage without authorization... and thereby obtain[]... (A) information obtained in a financial record... (B) information from any department or agency of the United States; (C) information stored on any protected computer, website, device, database or cloud-based storage; or **(D) sexually explicit images.**"

States should also amend their cybercrime laws to encompass cyber-sextortion because not all cyber-sextortion cases will be prosecuted federally. The Model Penal Code proscribes "breach of privacy of messages," defined as:

A person commits a misdemeanor if, except as authorized by law, he:

- (a) intercepts without the consent of the sender or receiver a message by telephone, telegraph, letter or other means of communicating privately; but this paragraph does not extend to (i) overhearing of messages through a regularly installed instrument on a telephone party line or on an extension, or (ii) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or incident to other normal operation and use; or
- (b) divulges without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was

illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.<sup>104</sup>

This model provision should be expanded to add, "**or (c) obtains sexually explicit images by accessing a computer, website, electronic device, storage system or database of any kind, without express authorization.**"

Again, the United States Sentencing Commission sentencing guidelines can be amended very simply to permit enhanced sentencing for sextortion cybercrime offenders. Currently, Section 2B1.1(b)(17) permits a two-level sentencing enhancement for convictions under 18 U.S.C. § 1030 where the offense involved "an intent to obtain personal information" or "the unauthorized public dissemination of personal information."<sup>105</sup> The Commission should address sextortion by including an enhancement if the offense involved "**an intent to obtain sexually explicit imagery.**"

### C. Domestic Violence Statutes

It is well understood that domestic violence is perpetrated in many different ways. Domestic violence statutes cover a wide range of violent interactions that do not necessarily involve physical violence, such as stalking, destruction of property and verbal or electronic threats of physical harm. As understanding of gender-based violence has grown, so has legislation aimed at combating it. For example, when the Violence Against Women's Act was reauthorized in 2000, it evolved from its 1994 inception to cover dating violence and cyberstalking. Adding sextortion to the list of offenses covered by domestic violence statutes, typically a state law crime, would be consistent with the evolution of domestic violence laws and will make them more comprehensive and effective.

There is ample support for sextortion to be included within the definition of domestic violence. For example, in *United States v. Petrovic*, discussed above, the victim's husband threatened to post sexually explicit images on the Internet unless the victim continued their relationship.<sup>106</sup> Similarly, in the Tennessee case of *Vafaie v. Owens*, the victim's former boyfriend threatened to distribute sexually explicit photographs of the victim to coerce her into paying disputed debts.<sup>107</sup> In a Washington case, *State v. Pauling*, the defendant sent sexually explicit images of the victim, his former girlfriend, to the victim's neighbors in an effort to enforce a small claims judgment.<sup>108</sup> These cases exemplify that many domestic abusers employ sextortion conduct to exert power and control over those with whom they have intimate relationships. As such, sextortion should also be explicitly included within the definition of domestic violence.

## D. Federal and State Sexual Offense Statutes

These recommendations to amend existing extortion and cybercrime laws will remedy deficiencies in the law so that sextortion acts are prosecuted. To fully address sextortion, however, this report encourages Congress and state legislatures to also closely examine codified definitions of "consent to engage in sex" within existing sexual offense statutes and amend those statutes to expressly prohibit "sexual acts induced by coercion" and "sexually explicit images received or possessed by coercion."

The Montana case *State v. Thompson*, discussed above, illustrates precisely why this legislative action is critical. In *Thompson*, a high school principal who told a student that she would not graduate unless she had sex with him went unpunished because of the absence of a "coercion" element in Montana's definition of sex "without consent."<sup>109</sup> A 2011 comprehensive review of state sexual assault laws shows that very few states criminalize sexual conduct induced by coercion, and even fewer define what constitutes "coercion."<sup>110</sup> That means that state laws do not cover sextortion as a sex crime even in situations where the victim is compelled to have sex.

Recognizing the Model Penal Code's influence, this report urges the American Law Institute committee that is currently reexamining the provisions of sexual assault and related offenses within the Model Penal Code to add a sextortion provision. Article 213, the sexual assault and related offenses section of the Model Penal Code, should include a provision that expressly prohibits sexual acts induced by coercion, and a provision that expressly prohibits inducing the creation or obtaining of sexually explicit images by coercion or theft. The existence of sextortion provisions within the Model Penal Code would provide reliable guidance to Congress, state legislatures, and courts throughout the nation, and will ensure that the full harm caused to victims will be acknowledged in sentencing.

## E. Sex Offender Notification and Registration Statutes

Sextortion is sexual coercion and perpetrators must be recognized as sex offenders. Sex offender notification and registration requirements provide notice to the public of the danger an offender poses and permits law enforcement to monitor offenders for an extended period of time, often the offender's lifetime.<sup>111</sup> Federal law provides minimum standards that all states and territories must adhere to in enacting sex offender registration and notification laws.<sup>112</sup> Indeed, the federal law "sets a floor, not a ceiling," enabling states to broaden the scope of offenses requiring classification as a sex offender.<sup>113</sup>

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States could easily amend their sex offender registration laws to include sextortion acts, in whatever form the law is amended, to criminalize sextortion. Offenders who fail to comply with the requirements of sex offender registration are exposed to further criminal liability under failure to register laws.<sup>114</sup> This change could be an important tool for deterrence of future acts of sextortion as it provides for greater oversight of offenders and public notification of their danger to public safety.



# CONCLUSION: A CALL TO ACTION



# CONCLUSION: A CALL TO ACTION

Sextortion is extortion where sex or sexual images, rather than money, is demanded by someone with power over the victim. Typical perpetrators include: public officials, judges, employers, teachers, and landlords.

The Internet has democratized the commission of sextortion. Whereas in the pre-Internet age, someone who extorted sex knew his victims, and had power over them because he controlled their future in some way, the Internet has made it possible for perpetrators to extort sex and sexual imagery from strangers. By hacking into their computers, stealing files or remotely enabling cameras on victims' computers, perpetrators can target hundreds of victims. Children and teens are easy marks because of their strong online presence. They comply with perpetrators' threats because they are afraid that their parents will punish them or that they will become social pariahs if the sextortor releases sexually explicit pictures of them to their friends, peer groups or other communities.

Victims of sextortion suffer the same lasting harm as other sexual assault victims. This includes profound psychological impact, such as post-traumatic stress disorder, depression, self-blame, shame, and isolation. Sextortion victims whose sexual images remain perpetually accessible on the Internet often suffer lasting embarrassment and anxiety because they are never able to reclaim those images or know who has seen them.

Even though the term sextortion is increasingly used by the media and law enforcement, it is not recognized as a crime in the United States. While some courts have shoehorned sextortion acts into other offenses (like extortion and cybercrimes), other courts have dismissed sextortion cases because those acts were not explicitly prohibited by statute. Explicit statutory prohibition of sextortion is critical to combating this growing sex offense. With public education and simple legislative reform, individuals and families can take steps to protect themselves from sextortion, sextortion will be reported more often, and law enforcement will have an effective mechanism to prosecute offenders.

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Legal Momentum urges that our state and federal laws address sextortion head-on:

- To ensure that it is recognized as a sex crime;
- To give victims the justice they deserve;
- To ensure that perpetrators can be prosecuted effectively and punished fully for their crimes; and
- For public safety.

Legislators should adopt Legal Momentum's legislative reform strategies and amend the following statutes as soon as possible to specifically address sextortion:

- Federal and state extortion statutes;
- Federal and state cybercrime statutes;
- Federal and state sex crime statutes;
- Federal and state domestic violence statutes;
- State sex offender registration and notification laws; and
- Sentencing guidelines.

By implementing the model legislation proposed in this report, perpetrators will be arrested, convicted and sentenced in a fashion that takes into account the severity of their sex crimes and the lasting impact their actions have on victims.

Making sextortion a crime is in the public interest. Legal Momentum calls upon schools, law enforcement, sports leagues, religious institutions, and other community groups to actively engage in public education campaigns to ensure that the public is aware that they can easily become sextortion targets. Public education campaigns should provide information on how the public can take precautions to protect themselves and their children from perpetrators and how to report sextortion if they are victimized. Our society has seen the benefit of similar successful public education campaigns in matters such as domestic violence awareness,<sup>115</sup> anti-smoking,<sup>116</sup> and seat belt safety.<sup>117</sup> The only way to expose perpetrators, who benefit from being shielded by their victims' feelings of shame, is to make sextortion a household word, and to discuss sextortion openly and publicly.

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# TIPS TO PREVENT CYBER-SEXTORTION

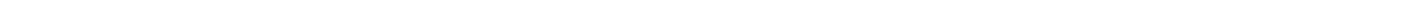


# TIPS TO PREVENT CYBER-SEXTORTION

- Remember that anyone can pretend to be someone else online.
- Do not open attachments from anyone that you do not know.
- Be aware that anything done online may be available to others. Do not send images of yourself that you want to remain private to anyone, no matter who they are—or say they are.
- Keep your computer safe from hackers by:
  - Keeping your computer's firewall turned on.
  - Installing and updating antivirus software and antispymware technology.
  - Keeping your computer's operating system up to date.
- Turn off your electronic devices and web cameras when you are not using them to minimize a hacker's ability to activate them remotely.<sup>118</sup>
- Ensure applications and social networking sites' privacy settings are set to the strictest levels.
- Parents should review and approve all applications downloaded to electronic devices and regularly monitor content of all applications and social networking platforms used by their children.
- Parents should keep computers used by children in a central location in the home and utilize parental controls. Parents should be present and engaged when children communicate via webcam.<sup>119</sup>
- Parents and educators should discuss Internet safety with their children. Parents should reinforce to their children that they should tell an adult if anyone threatens them or asks them for sexual acts or sexually explicit images.

For more information on how to keep you and your loved ones safe from sextortion, visit [www.fbi.gov](http://www.fbi.gov) or [www.missingkids.org](http://www.missingkids.org).

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# ENDNOTES



## ENDNOTES

<sup>1</sup> See Michael Kunzelman and Janet McConnaughey, "Ex-Prosecutor Accused of Soliciting Sex From Defendants," TPM News, Apr. 21, 2016 (available at <http://talkingpointsmemo.com/news/harry-morel-ex-prosecutor-investigation>, last visited Apr. 27, 2016); Jim Mustian, "Former St. Charles DA Harry Morel Was 'Sexual Predator' Who Victimized at Least 20 Women, Feds Say," The Advocate, Apr. 20, 2016 (available at <http://theadvocate.com/news/neworleans/neworleansnews/15534835-84/former-st-charles-da-harry-morel-pleads-guilty-to-obstruction-charge>, last visited Apr. 27, 2016).

<sup>2</sup> "Tennessee Judge Convicted in Courthouse Sexual Assaults," The New York Times, Dec. 20, 1992 (available at <http://www.nytimes.com/1992/12/20/us/tennessee-judge-convicted-in-courthouse-sex-assaults.html>, last visited Mar. 30, 2016); Ronald Smothers, "Judge's Sex-Abuse Trial Shocks a Town," The New York Times, Dec. 15, 1992 (available at <http://www.nytimes.com/1992/12/15/us/judge-s-sex-abuse-trial-shocks-a-town.html>, last visited Apr. 21, 2016).

<sup>3</sup> *United States v. Lanier*, 123 F.3d 945, 945 (6th Cir. 1997).

<sup>4</sup> "Female Survivors Urged to Flash Breasts for Help," World Net Daily, Sept. 5, 2005 (available at <http://www.wnd.com/2005/09/32178/>, last visited Mar. 30, 2016).

<sup>5</sup> In 2015, the IAWJ, together with the Thomson Reuters Foundation, issued the report "Combating Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation," (available at <http://www.trust.org/contentAsset/raw-data/588013e6-2f99-4d54-8dd8-9a65ae2e0802/file>, last visited Mar. 30, 2016), discussing the forms sextortion takes around the world (not including the United States). The IAWJ has been working internationally to raise awareness within the anti-corruption community about the public corruption taking the form of sextortion. In 2015, IAWJ presented a "Game Changer Session" entitled *Sextortion: Where Corruption and Sexual Exploitation Meet* at the International Anti-Corruption Conference in Putrajaya, Malaysia, and gave a sextortion presentation at the Anti-Corruption Workshop for Pacific Civil Society Organizations organized by the United Nations Office on Drugs and Crime and the United Nations Development Programme in Nadi, Fiji.

<sup>6</sup> See, e.g., *Jin v. Metropolitan Life Ins. Co.*, 310 F.3d 84 (2d Cir. 2002).

<sup>7</sup> See, e.g., *State v. Thompson*, 792 P.2d 1103 (Mont. 1990).

<sup>8</sup> See, e.g., *United States v. Lanier*, 520 U.S. 259 (1997).

<sup>9</sup> See, e.g., *Doe v. City of San Diego*, 35 F. Supp. 3d 1195 (S.D. Cal. 2014).

<sup>10</sup> See, e.g., *United States v. Hill*, 645 F.3d 900, 905 (7th Cir. 2011).

<sup>11</sup> See, e.g., "Indictment of Michael C. Ford," Aug. 18, 2015 (available at <http://www.justice.gov/opa/file/762111/download>, last visited Nov. 13, 2015).

<sup>12</sup> This conduct can also be a gateway to commercial child sexual exploitation, or sex trafficking. Once in possession of sexually explicit images of a child, traffickers or "pimps" may threaten dissemination of the images in order to coerce the child to comply with the traffickers' demands for the child to submit to sex acts for the traffickers' pecuniary gain. See "Commercial Sexual Exploitation of Children: A Fact Sheet," National Center for Missing and Exploited Children, 2010 (available at [http://www.missingkids.org/en\\_US/documents/CCSE\\_Fact\\_Sheet.pdf](http://www.missingkids.org/en_US/documents/CCSE_Fact_Sheet.pdf), last visited Apr. 21, 2016); see also Theresa Flores, "The Slave Across the Street," 2010 (a memoir that describes the ordeal of a teen girl that began with her being raped by at least two of her peers. Under the threat of dissemination of the recordings of her rape and physical assault, the victim was virtually enslaved for two years and forced to engage in sexual activity with numerous other men. This abuse went undetected even though she attended school and lived at home with her family in an upscale suburban neighborhood the entire time).

<sup>13</sup> "Sextortion, Help Us Locate Additional Victims of an Online Predator," Federal Bureau of Investigation, July 7, 2015 (available at <https://www.fbi.gov/news/stories/2015/july/sextortion>, last visited Mar. 16, 2016).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> In 2014, only 34% of rape and sexual assaults were reported to law enforcement. See United States Department of Justice, Bureau of Justice Statistics, "Criminal Victimization, 2014," revised Sept. 29, 2015 (available at <http://www.bjs.gov/content/pub/pdf/cv14.pdf>, last visited Apr. 26, 2016).

<sup>17</sup> "Affidavit in Support of a Criminal Complaint and Arrest Warrant," filed May 15, 2015 (available at [http://media.cmgdigital.com/shared/news/documents/2015/05/20/5.18.2015\\_EMBASSY\\_WORKER\\_PEEPING\\_TOM.pdf](http://media.cmgdigital.com/shared/news/documents/2015/05/20/5.18.2015_EMBASSY_WORKER_PEEPING_TOM.pdf), last visited Nov. 13, 2015); Justin Fishel, "State Department Worker Accused in 'Sextortion' of College-Aged Women," ABC News, May 21, 2015 (available at <http://abcnews.go.com/Politics/state-department-employee-accused-sextortion-college-aged-women/story?id=31205302>, last visited Nov. 13, 2015).

<sup>18</sup> "Indictment of Michael C. Ford," Aug. 18, 2015 (available at <http://www.justice.gov/opa/file/762111/download>, last visited Nov. 13, 2015).

<sup>19</sup> "Orange County Man Suspected of Hacking Computers Arrested on Federal Charges Related to Demands for Sexually Explicit Videos from Women and Teenage Girls," Federal Bureau of Investigation, June 22, 2010 (available at <https://www.fbi.gov/losangeles/press-releases/2010/la062210a.htm>, last visited Nov. 13, 2015).

<sup>20</sup> United States District Court, Central District of California, Docket No. CR 10-743 GHK for *United States v. Mijangos* (available at <https://casetext.com/case/united-states-v-mijangos>, last visited Nov. 13, 2015).

<sup>21</sup> "Orange County Man Who Admitted Hacking Into Personal Computers Sentenced to Six Years in Federal Prison for 'Sextortion' of Women and Teenage Girls," Federal Bureau of Investigation, Sept. 1, 2011 (available at <https://www.fbi.gov/losangeles/press-releases/2011/orange-county-man-who-admitted-hacking-into-personal-computers-sentenced-to-six-years-in-federal-prison-for-sextortion-of-women-and-teenage-girls>, last visited May 3, 2016); Greg Risling, "Luis Mijangos Sentenced to 6 Years for 'Sextortion,'" Associated Press, updated Sept. 2, 2011 (available at <https://www.yahoo.com/news/hacker-gets-6-sentence-sextortion-case-193550983.html>, last visited May 4, 2016).

<sup>22</sup> "Temecula Student Arrested in Sextortion Case Involving Multiple Victims," Federal Bureau of Investigation, Sept. 26, 2013 (available at <https://www.fbi.gov/losangeles/press-releases/2013/temecula-student-arrested-in-sextortion-case-involving-multiple-victims>, last visited Nov. 13, 2015).

<sup>23</sup> "Temecula Student Sentenced to Federal Prison in 'Sextortion' Case," United States Department of Justice, Mar. 17, 2014 (available at <http://www.justice.gov/usao-cdca/pr/temecula-student-sentenced-federal-prison-sextortion-case>, last visited Nov. 13, 2015).

<sup>24</sup> Greg Botelho, "Arrest Made in Miss Teen USA Cassidy Wolf 'Sextortion' Case," CNN, Sept. 27, 2013 (available at <http://www.cnn.com/2013/09/26/justice/miss-teen-usa-sextortion/>, last visited Nov. 13, 2015).

<sup>25</sup> "Temecula Student Arrested in Sextortion Case Involving Multiple Victims," Federal Bureau of Investigation, Sept. 26, 2013 (available at <https://www.fbi.gov/losangeles/press-releases/2013/temecula-student-arrested-in-sextortion-case-involving-multiple-victims>, last visited Nov. 13, 2015).

<sup>26</sup> "Temecula Student Sentenced to Federal Prison in 'Sextortion' Case," United States Department of Justice, Mar. 17, 2014 (available at <http://www.justice.gov/usao-cdca/pr/temecula-student-sentenced-federal-prison-sextortion-case>, last visited Nov. 13, 2015).

<sup>27</sup> Charles Wilson, "Richard Finkbiner, Indiana 'Sextortionist,' Sentenced to 40 Years for Webcam Sex Offenses," The Huffington Post, updated June 26, 2013 (available at [http://www.huffingtonpost.com/2013/06/26/richard-finkbiner-indiana-sentenced-sextortionist\\_n\\_3504094.html](http://www.huffingtonpost.com/2013/06/26/richard-finkbiner-indiana-sentenced-sextortionist_n_3504094.html), last visited Nov. 13, 2015).

<sup>28</sup> *See id.*; *see also* "U.S. Attorney Joseph Hogsett Announces Sentencing of Clay County Sextortion Defendant," Federal Bureau of Investigation, June 26, 2013 (available at <https://www.fbi.gov/indianapolis/press-releases/2013/u.s.-attorney-joseph-hogsett-announces-sentencing-of-clay-county-sextortion-defendant>, last visited Nov. 13, 2015).

<sup>29</sup> Del Quentin Wilber, "Hackers Extorting with Stolen Photos Increasingly Common," Bloomberg, July 21, 2014 (available at <http://www.bloomberg.com/news/articles/2014-07-21/hackers-extorting-with-stolen-photos-increasingly-common>, last visited Nov. 13, 2015).

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<sup>30</sup> "U.S. Attorney Joseph Hogsett Announces Sentencing of Clay County Sextortion Defendant," Federal Bureau of Investigation, June 26, 2013 (available at <https://www.fbi.gov/indianapolis/press-releases/2013/u.s-attorney-joseph-hogsett-announces-sentencing-of-clay-county-sextortion-defendant>, last visited Nov. 13, 2015).

<sup>31</sup> See National Sexual Violence Resource Center "Impact of Sexual Violence," 2010 (available at [http://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Factsheet\\_Impact-of-sexual-violence\\_0.pdf](http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Factsheet_Impact-of-sexual-violence_0.pdf), last visited Apr. 12, 2016).

<sup>32</sup> Dean G. Kilpatrick, Ph.D., "The Mental Health Impact of Rape," 2000, National Violence Against Women Prevention Research Center (available at <https://mainweb-v.musc.edu/vawprevention/research/mentalimpact.shtml>, last visited Apr. 12, 2016).

<sup>33</sup> NCMEC, "Trends Identified in CyberTipline Sextortion Reports," 2015 (available at [http://www.missingkids.org/en\\_US/documents/SextortionFactSheet.pdf](http://www.missingkids.org/en_US/documents/SextortionFactSheet.pdf), last visited Apr. 26, 2016).

<sup>34</sup> *New York v. Ferber*, 458 U.S. 747, 758 (1982).

<sup>35</sup> *Id.* at 759, n.10 (citing David Shouvin, "Preventing the Sexual Exploitation of Children: A Model Act," 17 Wake Forest L. Rev. 535, 545 (1981)). See also, *Osborne v. Ohio*, 495 U.S. 103, 111 (1990) (acknowledging that "pornography's existence causes the child victims continuing harm by haunting the children in years to come.").

<sup>36</sup> See Richard Mortley and Stephen Smallbone, "Internet Child Pornography: Causes, Investigations and Prevention" (2012).

<sup>37</sup> See Jane Anderson and Supriya Prasad, "Prosecuting Image Exploitation," AEquitas Strategies Newsletter Issue #15, Mar. 2015.

<sup>38</sup> *Id.*

<sup>39</sup> Tracy Clark-Flory, "Doxxing Victim: 'This Isn't About Porn, This is About Humiliation,'" Salon, Mar. 1, 2014 (available at [http://www.salon.com/2014/03/02/doxxing\\_victim\\_this\\_isn%E2%80%99t\\_about\\_porn\\_this\\_is\\_about\\_humiliation/](http://www.salon.com/2014/03/02/doxxing_victim_this_isn%E2%80%99t_about_porn_this_is_about_humiliation/), last visited Apr. 12, 2016).

<sup>40</sup> *Id.*

<sup>41</sup> *State v. Thompson*, 243 Mont. 28, 30 (1990), *overruled on other grounds by State v. Spreadbury*, 2011 MT 176 (2011).

<sup>42</sup> *Id.* at 33.

<sup>43</sup> Stephen Davis and Bryan Polcyn, "'You Will Address Me as Master' Wauwatosa Teen Tells Harrowing Story of 'Sextortion,'" Fox6News, July 5, 2015 (available at <http://fox6now.com/2015/07/05/you-will-address-me-as-master-wauwatosa-teen-tells-harrowing-story-of-sextortion/>, last visited May 3, 2016).

<sup>44</sup> *State of Wis. v. Wiley*, No. 2015CM00369 (Jan. 27, 2015).

<sup>45</sup> See Stephen Davis and Bryan Polcyn, "'You Have 30 Seconds to Take That Towel Off.' Prosecutors Say 'Sextortion' is a Growing Problem," Fox6News, May 17, 2015 (available at <http://fox6now.com/2015/05/17/466993/>, last visited Nov. 20, 2015).

<sup>46</sup> 18 U.S.C. § 875(d).

<sup>47</sup> 701 F.3d 849 (8th Cir. 2012).

<sup>48</sup> *Id.* at 852.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 853.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 854.

<sup>55</sup> *Id.* at 857.

<sup>56</sup> *Id.* at 858.

<sup>57</sup> See "Indictment of Michael C. Ford," Aug. 18, 2015 (available at <http://www.justice.gov/opa/file/762111/download>, last visited Nov. 13, 2015).

<sup>58</sup> *United States v. Abrahams*, 13-cr-00199 (C.D. Cal. 2014).

<sup>59</sup> "Temecula Student Sentenced to Federal Prison in 'Sextortion' Case," United States Department of Justice, Mar. 17, 2014 (available at <http://www.justice.gov/usao-cdca/pr/temecula-student-sentenced-federal-prison-sextortion-case>, last visited Nov. 13, 2015).

<sup>60</sup> See *Chappell v. United States*, 270 F.2d 274 (9th Cir. 1959).

<sup>61</sup> No. 10-743 (C.D. Cal. Mar. 11, 2011).

<sup>62</sup> "Orange County Man Who Admitted Hacking into Personal Computers Sentenced to Six Years in Federal Prison for 'Sextortion' of Women and Teenage Girls," Federal Bureau of Investigation, Sept. 1, 2011 (available at <https://www.fbi.gov/losangeles/press-releases/2011/orange-county-man-who-admitted-hacking-into-personal-computers-sentenced-to-six-years-in-federal-prison-for-sextortion-of-women-and-teenage-girls>, last visited Mar. 17, 2016).

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<sup>63</sup> "Glendale Man Who Admitted Hacking into Hundreds of Computers in Sextortion Case Sentenced to Five Years in Federal Prison," Federal Bureau of Investigation, Dec. 9, 2013 (available at <https://www.fbi.gov/losangeles/press-releases/2013/glendale-man-who-admitted-hacking-into-hundreds-of-computers-in-sextortion-case-sentenced-to-five-years-in-federal-prison>, last visited Mar. 17, 2016).

<sup>64</sup> An April 2016 United States Department of Justice report to Congress acknowledged that the prevalence of Internet-based sexual exploitation of children and teens, including sextortion, is only increasing. See "The National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress" (available at <https://www.justice.gov/psc/file/842411/download>, last visited May 10, 2016).

<sup>65</sup> Denise Lavoie, "FBI seeks sextortion victims of former Florida man in prison for 105 years," Orlando Sentinel, July 7, 2015 (available at <http://www.orlandosentinel.com/news/breaking-news/os-ap-lucas-michael-chansler-child-porn-20150707-story.html>, last visited Mar. 16, 2016).

<sup>66</sup> NCMEC, "Trends Identified in CyberTipline Sextortion Reports," 2015 (available at [http://www.missingkids.org/en\\_US/documents/SextortionFactSheet.pdf](http://www.missingkids.org/en_US/documents/SextortionFactSheet.pdf), last visited Apr. 26, 2016).

<sup>67</sup> 18 U.S.C. § 2251. For an image to be "sexually explicit," it is not required that the image depict a minor engaged in sexual conduct. Indeed, a picture of a nude minor may constitute illegal child pornography if the image is sufficiently sexually suggestive. See 18 U.S.C. § 2256; "Citizen's Guide to U.S. Federal Law on Child Pornography," United States Department of Justice (available at <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-pornography>, last visited Mar. 16, 2016).

<sup>68</sup> 18 U.S.C. § 2251(a) proscribes, in pertinent part: "Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in...any sexually explicit conduct for the purpose of producing any visual depiction of such conduct...shall be punished as provided under subsection (e)."

<sup>69</sup> 18 U.S.C. § 2252 proscribes, in pertinent part: "Any person who (1) knowingly transports or ships using any means or facility of interstate or foreign commerce...by any means including by computer or mails, any visual depiction, if (A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (B) such visual depiction is of such conduct; (2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce...by any means including by computer, or knowingly reproduces any visual depiction for distribution by any means or facility of interstate or foreign commerce...by any means including computer or through the mails, if (A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (B) such visual depiction is of such conduct."

<sup>70</sup> 18 U.S.C. §1470 proscribes that "Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not yet attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both."

<sup>71</sup> See 18 U.S.C. §§ 2251(e) and 2252(b)(1) which mandate minimum incarceration periods of fifteen years and five years respectively, with enhancements to those sentences for offenders who have previously been convicted of similar offenses or other sex offenses. See also, 1 U.S.C. § 3559(e), which provides for mandatory life imprisonment sentences for offenders who have committed a federal sex offense against a minor, including 18 U.S.C. §§ 2251 and 2252, and were previously convicted of a sex offense against a minor. Compare these mandatory minimum sentences to the statutorily prescribed maximum sentence of the federal extortion statute, 18 U.S.C. § 875(d), which is two years incarceration.

<sup>72</sup> "The National Guidelines for Sex Offender Registration and Notification," United States Department of Justice, Office of Attorney General, July 2008 (available at <http://ojp.gov/smart/guidelines.htm>, last visited Mar. 23, 2016).

<sup>73</sup> *McBoyle v. United States*, 283 U.S. 25, 27 (1931).

<sup>74</sup> *United States v. Lanier*, 520 U.S. 259, 267 (1997).

<sup>75</sup> *Id.* at 266.

<sup>76</sup> *Id.*

<sup>77</sup> 42 U.S.C. § 2000e-2(a).

<sup>78</sup> Jacqueline A. Barrien, Chair, United States Equal Employment Opportunity Commission, "Statement on 50th Anniversary of the Civil Rights Act of 1964," July 2, 2014 (available at <http://www.eeoc.gov/eeoc/history/cra50th/>, last visited Sept. 14, 2015).

<sup>79</sup> NWLC Blog, "Title VII at 50: Then and Now," July 2, 2014 (available at <http://www.nwlc.org/our-blog/title-vii-50-then-and-now>, last visited Sept. 13, 2015); see also NWLC Blog, "Title VII's Disparate Impact Doctrine: The Difference It's Made for Women," May 7, 2013 (available at <http://www.nwlc.org/our-blog/title-vii%E2%80%99s-disparate-impact-doctrine-difference-it%E2%80%99s-made-women>, last visited Sept. 15, 2015) ("Disparate impact has been crucial to addressing entrenched discriminatory employment practices. Indeed, women's entry into high-wage, nontraditional occupations has been made possible in large part by challenges to unfortunate employment practices that disproportionately disadvantage women, which would have otherwise remained unchanged but for the Title VII's disparate impact doctrine.").

<sup>80</sup> 18 U.S.C. § 2261 (criminal prohibition of interstate domestic violence); 42 U.S.C. § 13925 (codification of other aspects of Violence Against Women Act).

<sup>81</sup> United States Department of Justice, Bureau of Justice Statistics, "Special Report: Intimate Partner Violence, 1993-2010," Sept. 29, 2015, available at <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>, last visited Nov. 13, 2015).

<sup>82</sup> Gay, Lesbian & Straight Education Network, The 2013 National School Climate Survey, 2014 (available at <http://www.glsen.org/article/2013-national-school-climate-survey>, last visited Sept. 14, 2015).

<sup>83</sup> Catherine Chase, "U.S. State and Federal Laws Targeting Distracted Driving," *Annals of Advances in Automotive Medicine*, at 87 (Mar. 31, 2014).

<sup>84</sup> *Id.* at 87.

<sup>85</sup> *Id.*

<sup>86</sup> Michal Buchhandler-Raphael, "Criminalizing Coerced Submission in the Workplace and in the Academy," 19 *Colum. J. Gender & L.* 409, 430 (2010). "We are aware of previous calls to criminalize a subset of the conduct defined as sextortion by the IAWJ." See, e.g., Carrie N. Baker, "Sexual Extortion: Criminalizing Quid Pro Quo Sexual Harassment," 13 *Law & Ineq.* 213 (Dec. 1994) (arguing quid pro quo sexual harassment should be a crime); Christian Jordan, Note, "The Casting Couch is More than Tortious: The Case for Expanded Interpretations of Rape Statutes," 13 *S. Cal. Rev. L. & Women's Stud.* 199 (Fall 2003) (arguing that rape statutes should be applied where victim is subjected to economic duress or nonphysical menace). Others have argued for a tort that encompasses abuse of power. E.g., Leslie Bender, "Tort Law's Role as a Tool for Social Justice Struggle," 37 *Washburn L.J.* 249 (Winter 1998); Ronen Perry, "Empowerment and Tort Law," 76 *Tenn. L. Rev.* 959, 990 (Summer 2009) (arguing "a new type of claim for harmful abuse of power" would "help[] break unfair social structures and reduce[] power imbalances that decrease individuals' opportunities to control their lives"). See, e.g., Adrienne N. Kitchen, Note, "The Need to Criminalize Revenge Porn: How a Law Protecting Victims Can Avoid Running Afoul of the First Amendment," 90 *Chi.-Kent L. Rev.* 247, 261-62 (2015) ("Because civil law does not carry the same social stigma as criminal law, it is not a successful deterrent. . . . One state lawmaker explained legislation was necessary to help law enforcement combat revenge porn because 'currently, there are zero ramifications for someone who distributes revenge porn.'")

<sup>87</sup> Kathryn E. Suarez, Comment, "Teenage Dating Violence: The Need for Expanded Awareness and Legislation," 82 *Calif. L. Rev.* 423, 452 (Mar., 1994) ("Legislation can empower the victim of domestic violence and let her know she doesn't have to deal with the violence all by herself; at the same time it sends a powerful message to the batterer: The state government knows what you are doing and it not only disapproves but will punish you as well.").

<sup>88</sup> See National Sexual Violence Resource Center "Impact of Sexual Violence," 2010 (available at [http://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Factsheet\\_Impact-of-sexual-violence\\_0.pdf](http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Factsheet_Impact-of-sexual-violence_0.pdf), last visited Apr. 12, 2016).

<sup>89</sup> Daniel Bukszpan, "How Bill Cosby's Fortune and Legacy Collapsed," *Fortune*, July 15, 2015 (available at <http://fortune.com/2015/07/15/bill-cosby-fortune-collapse/>, last visited Sept. 14, 2015); see also "Bill Cosby's Accusers: A Timeline of Alleged Sexual Assault Claims (Updated)," *Entertainment Tonight Online*, Dec. 30, 2015 (available at [http://www.etonline.com/news/154160-timeline\\_of\\_bill\\_cosby\\_sexual\\_assault\\_allegations/](http://www.etonline.com/news/154160-timeline_of_bill_cosby_sexual_assault_allegations/), last visited Jan. 31, 2016); Jennifer Hoar, "Bill Cosby Settles Lawsuit," *CBS News*, Nov. 8, 2006 (available at <http://www.cbsnews.com/news/bill-cosby-settles-lawsuit/>, law visited Apr. 20, 2016).

<sup>90</sup> Sydney Ember and Colin Moynihan, "To Revoke or Not: Colleges That Gave Cosby Honors Face a Tough Question," Oct. 6, 2015 (available at <http://www.nytimes.com/2015/10/07/arts/television/to-revoke-or-not-colleges-that-gave-cosby-honors-face-a-tough-question.html>, last visited Jan. 28, 2016).

<sup>91</sup> Jennifer Medina, "Denying Accusations of Sexual Harassment, the Mayor of San Diego Resigns," The New York Times, Aug. 23, 2013 (available at [http://www.nytimes.com/2013/08/24/us/san-diego-mayor-resigns-in-sexual-harassment-scandal.html?\\_r=0](http://www.nytimes.com/2013/08/24/us/san-diego-mayor-resigns-in-sexual-harassment-scandal.html?_r=0)).

<sup>92</sup> Eliot McLaughlin, Sara Sidner and Michael Martinez, "Oklahoma City Cop Convicted of Rape and Sentenced to 263 Years in Prison," CNN, Jan. 22, 2016 (available at <http://www.cnn.com/2016/01/21/us/oklahoma-city-officer-daniel-holtzclaw-rape-sentencing/index.html>, last visited Mar. 30, 2016).

<sup>93</sup> Matt Dinger, "Preliminary Hearing for Oklahoma City Police Officer Daniel Holtzclaw is Underway," November 17, 2014 (available at <http://newsok.com/preliminary-hearing-for-oklahoma-city-police-officer-daniel-holtzclaw-is-underway/article/5367671>, last visited May 16, 2016).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> See, e.g., National Conference of State Legislatures, "State Cyberstalking and Cyber-harassment Laws," Jan. 12, 2015 (available at <http://www.ncsl.org/research/telecommunications-and-information-technology/cyberstalking-and-cyberharassment-laws.aspx>, last visited Nov. 11, 2015).

<sup>98</sup> During the final stages of publishing this report, the Brookings Institute released a report entitled "Closing the Sextortion Sentencing Gap: A Legislative Proposal," in which they recognize the same legal gap that Legal Momentum does in this report. The Brookings Institution, looking only at United States federal law, proposed that express criminalization of sextortion should be accomplished by a stand-alone sextortion statute. Legal Momentum encourages lawmakers to undertake this effort. This report, however, recognizes that sextortion can be effectively criminalized with less legislative effort and therefore, Legal Momentum proposes simple amendments to existing federal and state laws to accomplish this goal. See Benjamin Wittes, Cody Poplin, Quinta Jurecic, Clara Spera, "Closing the Sextortion Sentencing Gap: A Legislative Proposal," May 2016 (available at <http://www.brookings.edu/research/reports2/2016/05/sextortion-sentencing-wittes-poplin-jurecic-spera>, last visited May 11, 2016).

<sup>99</sup> Model Penal Code, §223.4 (1981)

<sup>100</sup> *Id.*

<sup>101</sup> United States Sentencing Commission, Guidelines Manual, § 2B3.2 (Nov. 2015) (available at <http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2015/GLMFull.pdf>).

<sup>102</sup> *United States v. Gall*, 552 U.S. 38 (2007).

<sup>103</sup> 18 U.S.C. § 1030(a)(2).

<sup>104</sup> Model Penal Code § 250.12.

<sup>105</sup> United States Sentencing Commission, Guidelines Manual, § 2B1.1 (Nov. 2015) (available at <http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2015/GLMFull.pdf>).

<sup>106</sup> 701 F.3d 849 (8th Cir. 2012).

<sup>107</sup> No.92C-1642, 1996WL 502133 (Tenn. App. 1996).

<sup>108</sup> 149 Wash. 2d 381 (Wash. 2003).

<sup>109</sup> 243 Mont. 28 (1990).

<sup>110</sup> See John F. Decker and Peter G. Baroni, "'No Still Means 'Yes': The Failure of the 'Non-Consent' Reform Movement in American Rape and Sexual Assault Law," 2013, 101 J. Crim. L. & Criminology 1081, 1120-1122.

<sup>111</sup> "The National Guidelines for Sex Offender Registration and Notification," United States Department of Justice, Office of Attorney General, July 2008 (available at <http://ojp.gov/smart/guidelines.htm>, last visited Mar. 23, 2016).

<sup>112</sup> See Adam Walsh Child Protection and Safety Act 2006, Public Law 190-248.

<sup>113</sup> "The National Guidelines for Sex Offender Registration and Notification," United States Department of Justice, Office of Attorney General, July 2008 (available at <http://ojp.gov/smart/guidelines.htm>, last visited Mar. 23, 2016).

<sup>114</sup> *Id.*

<sup>115</sup> In 1994, the AdCouncil began a campaign of public service announcements aimed at raising awareness of domestic violence. During the first year of this campaign, there were 34,000 calls made to the Family Violence Prevention hotline. See AdCouncil, "Domestic Violence," (available at <http://www.adcouncil.org/Our-Campaigns/The-Classics/Domestic-Violence>, last visited May 10, 2016).

<sup>116</sup> A 2012 United States Center for Disease Control and Prevention anti-smoking public education campaign has been credited with aiding 100,000 smokers to quit. See The Campaign for Tobacco Free Kids, "Public Education Campaigns Reduce Tobacco Use" (available at <https://tobaccofreekids.org/research/factsheets/pdf/0051.pdf>, last visited May 10, 2016).

<sup>117</sup> See Mark G. Solomon, Robert G. Ulmer, David F. Preusser, "Evaluation of Click It or Ticket Model Programs, Final Report to the National Highway Traffic Safety Administration," 2002 (finding an average 8.6% increase in seat belt use among ten states that implemented a media campaign and law enforcement effort aimed at increasing seat belt use).

<sup>118</sup> FBI, "How to Protect your Computer" (available at [https://www.fbi.gov/scams-safety/computer\\_protect](https://www.fbi.gov/scams-safety/computer_protect), last visited May 3, 2016).

<sup>119</sup> FBI, "A Parent's Guide to Internet Safety" (available at <https://www.fbi.gov/stats-services/publications/parent-guide>, last visited May 3, 2016).



# IF YOU BELIEVE YOU HAVE BEEN THE VICTIM OF SEXTORTION, REPORT IT:

- Even though sextortion is not clearly prohibited by law, the FBI has recognized the proliferation and danger of sextortion and has taken action to help citizens protect against it. An FBI fact-sheet on cybersextortion is located at <https://www.fbi.gov/news/stories/2015/july/sextortion/stop-sextortion-brochure>.
  - Report sextortion to your local law enforcement, the FBI (1-800-CALL-FBI or [www.fbi.gov](http://www.fbi.gov)), or the National Center for Missing and Exploited Children (1-800-the-lost or [www.cybertipline.org](http://www.cybertipline.org)).
  - Save all communications related to the sextortion and provide them to law enforcement.
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