

WITHOUT MY CONSENT

GRADE YOUR STATE CHECKLIST

Is your state a place that safeguards its citizens' ability to make a living, to obtain an education, to engage in civic activities, and to express themselves – free from nonconsensual porn?

Definitions of harassment and stalking in state civil and criminal codes¹

Definition of abuse in state domestic violence prevention act²

Judicial Council forms that provide check-the-box relief for harassment, stalking, and abuse³

State criminal nonconsensual porn law⁴

State civil nonconsensual porn law that provides shortcuts for filing as a Doe Plaintiff and sealing intimate records⁵

eCrime unit created and funded by your state's Attorney General⁶

Top down mandate from your state's Attorney General⁷

Laws that give officers the tools they need to enforce digital abuse criminal laws, including:

Forfeiture tools⁸

Search warrants⁹

Jurisdiction¹⁰

Self-Help Centers at local courthouses or LSC-funded programs that help victims of domestic violence navigate the restraining order system¹¹

1. The statutory definitions of stalking and harassment found in your state's civil and criminal codes should cover stalking and harassment when it is accomplished through the use of technology. Danielle Citron, *HATE CRIMES IN CYBERSPACE* 24 (Harvard University Press 2014). Note: you are **not** looking for a new law that has the word “cyber” or “internet” in it. If your state has one of those, it's fine, but tacking “cyber” onto everything is not the tune-up that's needed. What is needed? (1) The best statutes cover old, new, and future technologies, and never mention the word “cyber” or “internet.” That's because the drafters recognize that stalkers and harassers use a variety of methods to terrorize victims, and it's the totality of the circumstances that matters, not the specific tool used. (2) The most helpful statutes cover both physical violence **and** non-violent but still actionable threats to the victim's safety, career, or peace of mind (often used in addition to and as precursors to physical violence). See National Center for Victims of Crime, *The Model Stalking Code Revisited, Responding to the New Realities of Stalking*, January 2007, 38-40, available at <https://perma.cc/26FW-FEDR>. If your state has those two things, then “course of conduct” nonconsensual porn cases are probably already covered. The problem is not lack of coverage, but lack of resources and enforcement. If your state does not recognize the two prongs, then contact: (1) the National Center for Victims of Crime <http://victimsofcrime.org> to learn about the State Model Stalking Code <https://perma.cc/26FW-FEDR> and how you can volunteer to bring those revisions to your state; and (2) your local state government elected officials to urge that they sponsor revisions to your state's stalking laws. If your state treats stalking as a separate offence from harassment, Cal. Civ. Proc. Code § 527.6(b)(1)-(3) (harassment) is an example of a helpful harassment law.

2. The statutory definition of “abuse” found in your state's domestic violence prevention act should cover psychological and emotional abuse. See, e.g., Cal. Fam. Code § 6203. States that have such a statute recognize that “[d]omestic violence is not limited to actual and threatened physical acts of violence, but also includes sexual abuse, stalking, psychological and emotional abuse, financial control, property control, and other behaviors by the abuser that are designed to exert coercive control and power over the victim.” See Cal. Stats. 2014, c. 635 (A.B.2089), § 1, eff. Jan. 1, 2015, <https://perma.cc/FSM8-7XPG>. This is not to imply that nonconsensual porn is solely in the “psychological and emotional abuse” category of harms. It also causes reputational and economic harms, and raises the risk of offline stalking and physical attack. Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 Wake Forest Law Review 345 (2014). The benefit to having emotional abuse coverage in the domestic violence statute is that it eliminates ambiguity about what types of non-physical conduct might be considered “abuse,” which leads to more consistent results in the courts. Some (but not all) family court judges in states that do not have an emotional abuse prong in the domestic violence statute get creative about finding other prongs that nonconsensual porn might fall under. For example, see Venkat Balasubramani, *Revenge Porn Threat Justified Injunction*, Tech. & Marketing L. Blog (Feb. 20, 2014), <https://perma.cc/MZ2P-W9WG> (discussing Clark v. McLane, 2014 ME 18 (Feb. 11, 2014) (using the efforts to cause the victim to cease doing something “he or she had the right to do” prong of the Maine statute.)) To determine whether the statutory definition of “abuse” found in your state's domestic violence prevention act covers psychological and emotional abuse, go to <http://www.womenslaw.org>, where you can find all of the statutes related to domestic violence, custody, and divorce summarized in plain English. If your state does not recognize psychological and emotional abuse as a form of domestic violence, then contact: (1) your state domestic violence coalition <http://nnedv.org/resources/coalitions.html>, and ask if they are looking at revising your state's “abuse” statutes to include psychological and emotional abuse; and (2) your local state government elected officials to urge that they sponsor revisions

to your state's domestic violence laws. To advocate for national legislation (such as the forthcoming Intimate Privacy Protection Act), you would contact your representative in the U.S. House of Representatives. For some tips on how to prepare for that interaction, go to <http://ncadv.org/get-involved/legislation/contacting-members-of-congress>. For an example of a state domestic violence law that covers psychological and emotional abuse, see Cal. Fam. Code §§ 6203, 6320(a).

3. Once modernized harassment and abuse laws are in place, see that your state's Judicial Council converts the civil harassment and domestic abuse laws into check-the-box Judicial Council forms. Form driven relief is essential to affordable justice, and Judicial Council forms make same-day check-the-box digital abuse restraining orders possible. To learn about this process, see, e.g., California Report to the Judicial Council, Rules and Forms: Confidential Information Form under Civil Code § 1708.85, <https://perma.cc/UPL6-G7X6>. To see sample check-the-box Judicial Council forms, see, e.g., Cal. Civ. Code § 1708.85 converts to MC-125; Cal. Code of Civ. Proc. §§ 527.6 and 527.9 convert to CH-130; Cal. Fam. Code § 6200 et seq. converts to DV-130. Some laws require that the Judicial Council develop a form that conforms to statutory requirements. If you are part of the team revising a statute, this is a nice provision to add. Example of a Judicial Council form statutory mandate: “The Judicial Council shall, by July 1, 2015, develop the confidential information form specified in subdivision (f) of Section 1708.85 of the Civil Code.” Cal. Civ. Code § 1708.85 sec. 2.

4. State statutory definitions of “harassment” and “stalking” often require a “course of conduct” (meaning more than one act). In part because nonconsensual porn can be accomplished by only one act (and therefore may fall short of the statutory harassment definition), join the team bringing criminal nonconsensual porn laws to your state <http://www.cybercivilrights.org>. As of May 2016, 34 states plus DC have nonconsensual porn laws <https://www.cybercivilrights.org/revenge-porn-laws>. For an example of a helpful nonconsensual porn law, see CCRI Model State Law <https://www.cybercivilrights.org/model-state-law>.

5. The expense of hiring an attorney to write expensive briefs around pseudonymous filings and motions to seal is a barrier to justice. States can remove that barrier by creating form driven relief that shifts the burden to those who would oppose the relief requested. See California MC-125 Confidential (providing for Doe Plaintiff status and sealing of intimate records via a check-the-box Judicial Council form). This is often done through the state's civil nonconsensual porn law.

6. In 2011, California Attorney General Kamala Harris created an eCrime Unit within the California Department of Justice: <https://oag.ca.gov/ecrime>. According to a 2015 study released by the Pell Center for International Relations and Public Policy at Salve Regina University, only six states (California, Michigan, New Jersey, New York, Virginia, Washington) receive a checkmark for E-crime and Law Enforcement per the metrics used in the report. Francesca Spidalieri, *State of the States on Cybersecurity*, Pell Center for International Relations and Public Policy, Salve Regina University (Nov. 2015), <https://perma.cc/2NDW-ZWM6>.

7. In 2015, California's attorney general Kamala Harris created a first-of-its-kind online resource to train law enforcement about cyber-harassment: <https://oag.ca.gov/cyberexploitation>.

8. See, e.g., Cal. S.B. No. 676.

9. See, e.g., Cal. A.B. No. 1310.

10. See, e.g., Cal. A.B. No. 1310.

11. To learn about the resources in your state – legal aid clinics/agencies/foundations; law school clinics; pro bono services offered by law firms; self-help resources at your local civil & family law courthouse – that are made available free of charge to qualifying victims – please see Without My Consent's FAQ “I read WMC's guide to Evidence Preservation and completed the Evidence Chart. Now, how do I get a restraining order?”