

Tech-Facilitated Sexual Abuse During COVID-19



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As if we hadn't already been spending too much time in front of our screens, the COVID-19 pandemic has left us all home-bound and more screen-saturated than ever. Children are learning, playing, and socializing on screens. Adults are working, dating, and receiving medical care on screens. As a result, more people are becoming victims of online abuses. Cyber sexual abuse is among the many and proliferating types of cyber offenses. It is a particularly heinous crime that can cause significant harm to a victim's personal life, finances, reputation, and career.

I am a plaintiffs' attorney who specializes in cyber sexual abuse. I represent individuals who are typically going through the worst time of their lives. My typical clients are victims of domestic violence, sexual assault, extortion, and/or privacy invasions. These offenses aren't new, but we've seen a drastic uptick in cases since the pandemic started. Such cyber offenses often arise in the context of other social and legal conflicts that Rhode Island lawyers encounter in their practices. This article seeks to provide guidance and practical remedies to help you when your clients confront these new and developing issues in the law.

Cyber Sexual Offenses

Increasingly, technology plays a central role in facilitating sexual abuse. Technologies like social media, smartphones, and online communications are both the instruments for abuse and the mechanisms to proliferate the harm caused. Technology provides the platforms and means for individuals to stay intimate with one another – particularly during times in which we aren't able to be together in person. But it likewise allows for bad actors to abuse the trust of their victims and attack when relationships go bad.

For example, many of my clients are victims of nonconsensual pornography or unauthorized dissemination of indecent material,¹ whereby abusers distribute naked photographs or videos without the consent of the person depicted. This usually occurs after an online or offline intimate encounter. In addition to sharing intimate content through direct message and email, abusers post it publicly on social media and upload it to pornog-

raphy sites. A private moment between consenting adults turns into a humiliating exposure when the offender attaches the victim's name and other personally identifying information to the content and it starts appearing in the victim's Google search results.

Recording a partner in an intimate state without consent is a separate and distinct offense that is also criminal – regardless of whether the content is shared with third parties or not.² The crime of video voyeurism is an example of *in-person* abuse which can have detrimental consequences if the internet is used to proliferate the violation. A perpetrator may distribute such intimate material online for financial gain or to humiliate the person depicted.

We've also seen a significant uptick in "sex-tortion" cases.³ People are experimenting with dating and intimacy online through some of the thousands of websites that allow for online sexual encounters, which all hold the potential for abuse. In sextortion cases, people are often groomed into relationships and tricked into exposing themselves sexually. As soon as the wrongdoer receives any sort of intimate content, they immediately make demands for money or additional sexual material.⁴ The threat is always exposure. The victims are humiliated, horrified, and in urgent need of help. Sextortion is a crime in Rhode Island,⁵ and on the federal level,⁶ so legal remedies can and should be pursued. Unfortunately, many people believe they have done something wrong for having had the sexual encounter in the first place, and don't seek help but rather continue providing content or money to their abuser. They are afraid that if they seek help, or stop paying, the sextortionist will publish the content, and humiliate them in front of their loved ones, friends, employers, and colleagues.

Cyber-stalking and Cyber-harassment are both crimes that are facilitated on phones, computers, and tablets.⁷ These offenses are frighteningly easy to perpetrate for anyone who intends to cause harm to another. Any jilted ex-lover, obsessed stranger, or bored misanthrope can simply pick up a smartphone and stalk or harass an innocent victim. Cyberstalking often involves repeated and unwanted communications through multiple plat-

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forms, such as texts, emails, and social media messages. It can include “following” or “liking” another person’s posts, contacting their friends or family, and creating harassing social media profiles, in order to continue their contact with the victim and cause them harm. Often times the abuser may use anonymizing techniques to attempt to evade detection, which can be an added challenge for law enforcement if criminal reports are made.⁸

Tech-facilitated abuse is also common in domestic violence cases. Abusers may install keylogging software into their victims’ phones and computers, tracking their every move online. They may read texts and communications and monitor the websites their victims visit – some of which may be visited in an effort to seek help and relief from that very pattern of abuse. This kind of surveillance often compounds and enhances other methods of control and manipulation in abusive relationships. Concern about domestic violence is at an all-time high considering many of these survivors are stuck at home with their abusers without the outlet of being able to go to work or see friends during the pandemic.

Cases You May See And How You Can Help Your Clients

These types of cyber sexual offenses arise in various legal cases you will encounter in your Rhode Island practice. All of these offenses are criminal, so if the client is willing, a police report and criminal case may be appropriate. However, turning to the police isn’t always the ideal choice for people suffering such privacy violations. Survivors are often embarrassed and prefer to handle these situations quietly and discreetly.

For victims of domestic violence, you could assist them in obtaining a restraining order in Family Court or District Court. You might ask the judge for special terms and conditions to be added to the standard “no contact” language to cover the cybercrimes specifically. For example, the judge may require the deletion of naked photographs, prohibit the distribution of intimate images, and remove tracking software from devices.

Privacy violations are often found in divorce cases. Vengeful spouses who record their partners in the nude or in sexual encounters without their permission may try to use the content against their partner in a proceeding. Tracking a partner’s behaviors online in an effort to prove infidelity or other misconduct is also common and yet strongly discouraged as these behaviors may be criminal hacking.⁹ In contentious divorces, your clients may benefit if you can identify and call attention to such criminal acts.

In business disputes, I’ve seen bad actors attempt to use inap-

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appropriate material obtained as leverage to negotiate a desired outcome. If the leverage is sexual or private in nature, this may be extortion and a serious violation of the law. In employment settings, employees may be suffering (or perpetrating) cyber abuse on their work computers, impacting their performance and experiences at work.

Not only does Rhode Island have criminal laws that address many of these wrongs,¹⁰ the state likewise has privacy tort laws that allow clients to sue their perpetrators for monetary damages and injunctions. The following civil claims may apply to a case of cyber sexual abuse depending on the facts: Intrusion Upon Seclusion, Appropriation of Likeness, Publicity to Private Life, and False Light.¹¹

Cyber offenses aren't going to disappear as the pandemic abates. Cyber sexual abuse is enabled by technology and will continue to rise in frequency and severity. As technology evolves, people will find new harmful ways to use it to hurt one another. If you have a case involving cyber sexual abuse, don't be scared away by the technological and sexual nature of the offenses. These are serious violations, and legal remedies are available.

Lindsay Lieberman is a sexual privacy attorney and legal consultant with over ten years of experience in criminal and civil court. Specializing in sexual abuse, Lindsay brings claims on behalf of victims and consults with firms and organizations on their sexual misconduct policies. Lindsay welcomes your inquiries at info@lindsaylieberman.com.

ENDNOTE

1 R.I. Gen. Laws § 11-64-3(a), *Unauthorized dissemination of indecent material*. "Nonconsensual pornography" is commonly used to describe this offense. However, the term is a misnomer, as the word "pornography" suggests that this content is entertainment. Because this type of material is shared without consent, it should not be deemed pornography.

2 R.I. Gen. Laws § 11-64-2, *Video voyeurism*.

3 R.I. Gen. Laws § 11-42-2, *Extortion and blackmail*.

4 It is commonly referred to as "Sextortion" when the threat is sexual in nature – either the content threatened to be shared is sexual or the demand is for additional sexual content.

5 R.I. Gen. Laws § 11-64-3(e).

6 18 U.S.C. 41.

7 R.I. Gen. Laws § 11-52-4.2.

8 Cyberstalking can also be prosecuted at the Federal level. See 18 U.S. Code § 2261A.

9 R.I. Gen. Laws § Section 11-52, *Computer Crimes*.

10 See *Unauthorized Dissemination of Indecent Material, Video Voyeurism, Cyberstalking*, R.I. Gen. Laws § 11-64-3, R.I. Gen. Laws § 11-52.4.2

11 R.I. Gen. Laws § 9-1-28.1. ◇

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