

Solving the Sextortion Puzzle: Piecing Together a Model State Sextortion Statute

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SOLVING THE SEXTORTION PUZZLE: PIECING TOGETHER A MODEL STATE SEXTORTION STATUTE

I. INTRODUCTION

Ashley Smith is in her second year of law school aspiring to become a corporate attorney.¹ She devotes all her time to maintaining her number one class rank. Ashley is interested in dating but does not have time to meet anyone, so she decides to utilize a social media dating application. She meets someone online named Drew Anders, who purports to be an engineer with as much free time as Ashley. Ashley continues to talk with Drew for months and the two become close. One evening, Drew messages Ashley asking for an explicit photograph of her. Ashley sees no harm in doing so and sends Drew a sexually suggestive photograph of herself. Drew compliments her appearance and the two continue to message as usual.

A week later, Drew asks Ashley for a “naked” photograph. Ashley refuses. Drew then threatens to send her previous “sexually suggestive photograph” to everyone he knows unless she complies. Ashley, hurt by this sudden threat, blocks Drew’s phone number hoping that he will relent. However, unknown to Ashley, Drew had previously hacked into her computer one month before she blocked his number. Drew had inserted a device that could control her computer and phone’s camera.

Toward the end of her fall semester, Ashley searched on her computer for summer internship opportunities, when suddenly, a picture of Ashley naked, coming out of the shower, appeared on the computer. Thirty more naked pictures appeared on the computer screen. A message appeared that stated, “You thought you could screw with Drew, but all along I was screwing with you. Send me naked pictures, or I will ruin your legal career before you graduate. I control your phone, your computer, and your life.”

Unlike other crimes that may require brawn or a weapon, sextortion only requires a computer.² Sextortion takes on many convenient forms

¹ The following hypothetical was formulated by the author to illustrate the pervasiveness of sextortion into the lives of everyone.

² See *infra* Part II.A (explaining that sextortionists are sometimes hundreds of miles away from their victims). See also Tracy Webb, *The Brave New World of Cyber Crime Investigation and Prosecution*, 19 NEXUS: CHAP. J. L. & POL’Y 77, 82–83 (2013–2014) (defining sextortion as extortion for sexual images, which can have both adult and juvenile victims). See also *Temecula Student Sentenced to Federal Prison in Sextortion Case*, FBI.GOV (Mar. 17, 2014), <https://archives.fbi.gov/archives/losangeles/press-releases/2014/temecula-student-sentenced-to-federal-prison-in-sextortion-case> [<https://perma.cc/3Y5N-GTCQ>] (reporting the prosecutors wrote in the sentencing memo, regarding sextortion, that “individuals []

and can be committed by anyone.³ Computers allow sextortionists the option to cybershop for the victim or victims they want.⁴

Only a handful of states have enacted laws that explicitly prohibit sextortion.⁵ States without sextortion statutes, along with the federal government, have had to make sextortionists' actions fit within traditional, already established crimes.⁶ Among the states that are united against the crime of sextortion, the legislatures are divided as to how it should be criminalized and punished.⁷ This Note proposes a model "sextortion" statute that incorporates successful portions of differing state sextortion statutes—California, Arkansas, and Utah—and the proposed federal sextortion statute.⁸

This Note explores the crime of sextortion and discusses statutory elements.⁹ First, Part II of this Note discusses types of sextortion, state sextortion statutes, and a proposed federal statute that is designed to criminalize sextortion.¹⁰ Second, Part III of this Note analyzes the effectiveness of these approaches.¹¹ Third, Part IV of this Note produces a model state sextortion statute.¹² Finally, Part V of this Note concludes all of the information discussed.¹³

II. BACKGROUND

A. *What Is Sextortion?*

Sextortion is defined by the FBI as "a serious crime that occurs when someone threatens to distribute your private and sensitive material if you [do not] provide them with images of a sexual nature, sexual favors, or money."¹⁴ Sextortion is a new crime that has been codified by only a few

have the ability to affect a person's life in frightening ways by using the broad reach of the Internet").

³ See *infra* Part II.B (describing different methods sextortionists have used on their victims and the sextortionists' varying geographical locations, ages, and professions).

⁴ See *infra* Part II.B (giving examples of sextortionists picking a variety of victims).

⁵ See *infra* Part II.D.

⁶ See *infra* Part II.D.

⁷ See *infra* Part III (illustrating the ways in which state sextortion statutes and proposed federal sextortion statute differ from one another).

⁸ See *infra* Part IV.

⁹ See *infra* Part II & Part III.

¹⁰ See *infra* Part II.

¹¹ See *infra* Part III (analyzing state and proposed federal sextortion statutes by comparing the unique parts of each).

¹² See *infra* Part IV (presenting a model state sextortion statute that is comprised of the successful parts of the existing state and proposed federal sextortion statute).

¹³ See *infra* Part V.

¹⁴ See *What Is Sextortion?*, FBI.GOV (Aug. 27, 2018), <https://www.fbi.gov/video-repository/newss-what-is-sextortion/view> [<https://perma.cc/YZ2L-ZEVA>] (explaining

states within the last decade.¹⁵ Recently, Congress introduced a federal bill criminalizing sextortion.¹⁶ The state laws governing sextortion vary as to both the crime and the punishment accorded with violating the law.¹⁷ Before analyzing the federal sextortion bill and state sextortion laws, Section II.A.1 surveys the foundational laws associated with sextortion, and Section II.A.2 defines sextortion.¹⁸ Next, Part II.B provides cases of individuals who have committed sextortion, while Part II.C explains the statutes used to charge the sextortionists.¹⁹ Finally, Section II.D.1 highlights the state sextortion statutes, and Section II.D.2 reports details on the federal sextortion bill.²⁰

1. Foundational Crimes for Sextortion

In the digital age, the crimes of extortion and blackmail have evolved to become sextortion.²¹ Extortionists would threaten to expose

sextortion and ways to avoid being a victim of sextortion). However, some agencies define sextortion as “the use of threats to coerce a child into providing sexually explicit images.” See Darcy Katzin, Mi Yung Park & Keith Becker, *Social Networking Sites: Breeding Grounds for “Sextortion” Prosecutions*, 59 U.S. ATT’Y’S BULL. 54, 54–57 (2011) (discussing the various forms of sextortion and how social networking sites make it easier for online predators to find victims).

¹⁵ See Adelina Lancianese, *State ‘Sextortion’ Bill Would Criminalize Sexual Coercion*, 90.5 WESA (Apr. 19, 2018), <http://www.wesa.fm/post/state-sextortion-bill-would-criminalize-sexual-coercion#stream/0> [<https://perma.cc/58SJ-BCHC>] (explaining the development of Pennsylvania’s sextortion bill and the states that already have sextortion statutes in place).

¹⁶ See, e.g., Online Safety Modernization Act of 2017, H.R. 3067, 115th Cong. § 2751 (2017) (proposing that sexual extortion become a federal crime).

¹⁷ See *infra* Part II.D & Part III.B (describing the state sextortion statutes and their differences).

¹⁸ See *infra* Section II.A.1 & Section II.A.2 (expounding on the origin and meaning of sextortion).

¹⁹ See *infra* Part II.B & Part II.C (providing examples of sextortion and how the sextortionists were charged).

²⁰ See *infra* Section II.D.1 & Section II.D.2 (discussing the federal sextortion bill and state sextortion statutes).

²¹ See WYO. STAT. ANN. § 6-2-402(e) (Westlaw through 2018); *Greenspun v. Gandolfo*, 320 P.2d 628, 630 (Nev. 1958) (noting that blackmail is synonymous with extortion); *Commonwealth v. Burdell*, 110 A.2d 193, 196 (Pa. 1955) (referring to extortion and blackmail as one and the same). This Note recognizes extortion and blackmail collectively as extortion. In 1791, Alexander Hamilton, America’s first treasury secretary, was extorted because of an affair he had. See Elizabeth Nix, *Where Did the Word “Blackmail” Come From?*, HIST. (Sept. 25, 2015), <https://www.history.com/news/where-did-the-word-blackmail-come-from> [<https://perma.cc/EE9Z-R48E>]. The woman told Hamilton that her husband abandoned her, and after Hamilton became romantically involved with the woman, her husband came back into her life and demanded that Hamilton pay him to keep quiet about the affair. See *id.* Later, the husband was caught trying to defraud the government, tried to implicate Hamilton in his scheme, and Hamilton decided to come clean about his affair to prove that he was only connected to the husband due to Hamilton’s affair. See *id.* (indicating that

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inappropriate pictures or sexual secrets of their victims “the old-fashioned way” through the dissemination of physical photographs of the victim or some written statement about the victim’s sexual secret, in exchange for something of value.²² However, the crime of extortion has changed since its early beginnings in the United States.²³

Sexual assault, another foundational crime for sextortion, involves a nonconsensual sexual act, including instances when a victim lacks the necessary capacity to consent.²⁴ Sex offenders are sorted into four typologies: child abusers, rapists, female offenders, and internet offenders.²⁵ Many internet offenders are engaged in child pornography.²⁶

Hamilton came clean about his affair). See also John Schwartz, *The Art of Blackmail*, N.Y. TIMES (Oct. 3, 2009), <https://www.nytimes.com/2009/10/04/weekinreview/04schwartz.html> [<https://perma.cc/232S-AF4M>] (narrating the 1824 attempted extortion of the first Duke of Wellington with a salacious memoir by the Duke’s former mistress). The crimes of extortion and blackmail are distinguished from sextortion in that sextortionists are focused on coercing an individual to do some sexual act, often leaving the victim feeling dehumanized. See *infra* Part II.B (identifying various sexual demands sextortionists force their victims to comply with).

²² See *People v. Peniston*, 242 Cal. App. 2d 719, 721 (Ct. App. 1966) (holding that defendant extorted his ex-lover for money by threatening to take the indecent pictures he possessed of her to her husband and parents).

²³ Compare *Brabham v. State*, 18 Ohio 485, 489 (1869) (ruling that the letter did not indicate any attempt of extortion, even if threats were verbally made), with *Evans v. United States*, 504 U.S. 255, 261 (1992) (recognizing that Congress has expanded the common-law definition of extortion to include acts committed by private persons to obtain property by means of force, threats, or fear). Extortion does not adequately handle crimes of sextortion because it fails to account for the sexual nature of sextortion. See *infra* Section II.B.1 (describing the sexually invasive and dehumanizing acts the sextortionists committed).

²⁴ See Office on Violence Against Women, *Sexual Assault*, U.S. DEP’T JUST. (Aug. 27, 2018), <https://www.justice.gov/ovw/sexual-assault> [<https://perma.cc/S2C5-B373>] (defining sexual assault). Behavior constituting sexual assault even includes publicly displaying images that were privately taken of the victim or were taken without the victim’s knowledge. See also *Rape and Sexual Violence*, NAT’L INST. JUST. (Mar. 23, 2017), <https://www.nij.gov/topics/crime/rape-sexual-violence/Pages/welcome.aspx> [<https://perma.cc/YP2E-LFF8>] (clarifying what constitutes sexual assault). There are still types of sexual behavior that would not constitute sexual assault because of technicalities within the wording of laws. See Stephen J. Schulhofer, *Rape in the Twilight Zone: When Sex is Unwanted But Not Illegal*, 38 SUFFOLK U.L. REV. 415, 422–23 (2005) (presenting the idea that sexual autonomy can be preserved and protected by requiring “genuine, actual permission”).

²⁵ See U.S. DEP’T JUST., SEX OFFENDER MGMT. ASSESSMENT AND PLAN. INITIATIVE 61–70 (2014), https://smart.gov/SOMAPI/pdfs/SOMAPI_Full%20Report.pdf [<https://perma.cc/HR9G-94BY>] (describing the different sex offender typologies).

²⁶ See *id.* at 68 (discussing internet sexual offenders but not reflecting the number of people who use the internet to sexually abuse adults). When and if the government places internet offenders against children on probation, the offenders are to attend rehabilitation programs as part of their probation. See Krista L. Blaisdell, Note, *Protecting the Playgrounds of the Twenty-First Century: Analyzing Computer and Internet Restrictions for Internet Sex Offenders*, 43 VAL. U. L. REV. 1155, 1193–96 (2009) (stressing the importance of sex offender rehabilitation after incarceration and the fact that sex offenders are capable of being rehabilitated).

Unlike online crimes against children, the crime of sextortion includes offenses against both adults and children, and “sexting laws” differ from sextortion because sexting is between two consensual persons, and sextortion occurs through threats.²⁷

2. Sextortion Today

There are various types of sextortion that an individual can commit. One type involves an individual who ultimately desires money, and another type involves an individual who ultimately wants some sort of sexual gratification.²⁸ The former is more akin to a severe form of cyber extortion whereas the latter is like a cyber-sexual assault.²⁹ This Note focuses more closely on the version that is more akin to sexual assault and involves the use of a threat to gain something sexual rather than something monetary.³⁰

²⁷ See 18 U.S.C. § 2251 (2012) (outlawing sexual exploitation and abuse of children). See also Robert Mummert, *Sexting and the Law: How Lack of Reform in California Puts Teenagers in Jeopardy of Prosecution under Child Pornography Laws Enacted to Protect Them*, 38 W. ST. U. L. REV. 71, 74 (2010) (explaining sexting and the fact that it is consensual). See also Marsha Levick & Kristina Moon, *Prosecuting Sexting as Child Pornography: A Critique*, 44 VAL. U. L. REV. 1035, 1046–47 (2010) (emphasizing the need to avoid criminal charges for children involved in sending sexually explicit images and videos of themselves).

²⁸ See Benjamin Wittes, *Cyber Sextortion and International Justice*, 48 GEO. J. INT’L L. 941, 944–45 (2017) (discussing sextortion and the sexual and monetary value sought from it). See also *Online Safety*, INTERPOL (Nov. 23, 2018), <https://www.interpol.int/Crime-areas/Cybercrime/Online-safety/Sextortion> [<https://perma.cc/A6BL-64KQ>] (defining sextortion as “blackmail in which sexual information or images are used to extort sexual favours and/or money from the victim”).

²⁹ See Wittes, *supra* note 28, at 947 (calling sextortion either a form of sexual violence or a data breach).

³⁰ See *infra* Part II.C (highlighting examples of sextortion referred to in this Note). The crime of sextortion is different from the crime of revenge pornography. See H.R. 4472, 115th Cong. § 1802 (2017) (proposing a statute that would criminalize disseminating sexually explicit material of another adult). Revenge pornography is only concerned with adults—this is implied by § 1802(a)(4)(B)(ii), in which the only specific reference to nudity includes “naked genitals or post-pubescent female nipple” as opposed to just a female nipple—and the offender’s action of disseminating the material constitutes a crime, regardless of the offender’s motivation or possible extortionary nature. See *id.* (creating a crime that punishes people for posting an intimate visual depiction of another without consent). An example of revenge pornography occurred in November 2018, when a former Texas councilman was ousted from office after city hall and the media received naked photographs of the councilman from the dating app, Grindr. See Mihir Zaveri, *A Gay Councilman in Texas, Ousted from Office, Says He Was Blackmailed with Naked Photos*, N.Y. TIMES (Nov. 17, 2018), <https://www.nytimes.com/2018/11/17/us/gay-councilman-election-recall-texas.html> [<https://perma.cc/S2W2-UDEH>].

Sextortion can be a local or global phenomenon, sometimes with the sextortionist and victims on opposite sides of the world.³¹ Sextortion commonly occurs on social media, where a sextortionist will “catfish” a victim—lure the victim into an online relationship under false pretenses—and seduce the victim into sharing sexually explicit pictures or videos, which are later used for leverage and control over the victim.³² However, one does not need to contact a sextortionist to become a victim because

³¹ See Simon Parry, *Sextortion, Lies and Videotape: The Philippine Cybercriminals Who Target Men in Hong Kong and Worldwide*, POST MAG. (Feb. 10, 2017), <https://www.scmp.com/magazines/post-magazine/long-reads/article/2069492/sextortion-lies-and-videotape-philippine> [<https://perma.cc/627E-LHKS>] (elaborating on how Maria Caparas, a mother of five children, ran a sextortion ring that claimed close to two million dollars from thousands of victims in the United States of America, Great Britain, Australia, Hong Kong, and Singapore). See also Chris Baynes, *Huge Increase in British Men Falling Victim to ‘Sextortion’ Gangs*, INDEP. (May 24, 2018), <https://www.independent.co.uk/news/uk/crime/sextortion-gangs-uk-men-targeted-increase-national-crime-agency-a8368176.html> [<https://perma.cc/E7WS-SPUV>] (giving an account of how, in 2015, a male teenager committed suicide because he was sextorted by a Romanian gang, posing as a girl, that had received photographs from him). Former U.S. Attorney General Janet Reno spoke on cybercrime and stated:

There is a dark side. A dark side in terms of traditional crime, of threats, child pornography, fraud, gambling, stalking, and extortion. They are all crimes that, when perpetrated via the Internet, can reach a larger and more accessible pool of victims, and can transform local scams into crimes that encircle the globe.

See Terrence Berg, *www.wildwest.gov: The Impact of the Internet on State Power to Enforce the Law*, 2000 BYU L. REV. 1305, 1340 (2000) (discussing the difficulty authorities face when pursuing cyber perpetrators not located within their jurisdiction).

³² See Linda Childers, *Sextortion: How a New Breed of Predator Exploits Victims Through Their Own Computers*, ALLURE (Oct. 16, 2017), <https://www.allure.com/story/online-predators-blackmail-sextortion-victims-explicit-images> [<https://perma.cc/32KL-34FB>] (summarizing a victim’s sextortion experience when she met someone on Twitter, sent inappropriate images of herself to him, and then the sextortionist threatened to, and eventually did, post the photos on Twitter). The reason sextortionists often have many victims is because the stigma of the type of photographs the victim sends makes victims reluctant to contact law enforcement and, instead, comply with the sextortionist’s request with the hope that the sextortionist will go away. See *id.* (providing an explanation for why sextortion victims do not always go to the authorities). See also Webb, *supra* note 2, at 82 (describing the crime of sextortion and providing examples of sextortion).

sextortionists actively search for their victims.³³ Sextortion is committed through seducement or hacking, as seen in the upcoming examples.³⁴

3. Jurisdictional and Double Jeopardy Considerations

Sextortion, like other cybercrimes, creates a jurisdictional nightmare because it weaponizes the internet to target victims everywhere.³⁵ Thus far, states have had to rely on their own statutes authorizing extraterritorial criminal jurisdiction to reach and prosecute cybercriminals living outside state borders.³⁶ When a state does capture and successfully prosecute a cybercriminal, other states and the federal government can then pursue their own prosecution against the cybercriminal, thus

³³ See Michael Winter, *Calif. Youth Admits Miss Teen USA 'Sextortion' Plot*, USA TODAY (Nov. 12, 2013), <https://www.usatoday.com/story/news/nation/2013/11/12/miss-teen-usa-sextortion-guilty-plea/3510461/> [<https://perma.cc/ANP5-WSRK>]. Jared James Abrahams, a nineteen-year-old in California, had hacked into several unsuspecting girls' computer webcams and took photos of them. See *id.* (examining how Abrahams craftily captured images of girls with their own cameras). Abrahams then threatened to post the photos of the girls unless they sent him naked pictures or stripped for him on camera – two girls were known to have complied with his threats. See *id.* Upon being threatened, former Miss Teen USA Cassidy Wolf went to the authorities. See *id.* (writing that Wolf had family support and refused to give in to any demands). Abrahams was sentenced to eighteen months in prison. See *id.* See also Rebecca Abrahams & Stephen Bryen, *Your Computer and Phone Cameras Are On-Beware!*, HUFFINGTON POST (Dec. 6, 2017), https://www.huffingtonpost.com/rebecca-abrahams/your-computer--phone-came_b_5398896.html [<https://perma.cc/C9CU-8TCA>] (reflecting on sextortion as a growing problem).

³⁴ See *infra* Part II.B (introducing the different sextortion examples). Hacking is frightening because it can affect anyone with personal information on a computer. See Office Pub. Affairs, *Former U.S. State Department Employee Sentenced to 57 Months in Extensive Computer Hacking, Cyberstalking and "Sextortion" Scheme*, U.S. DEP'T JUST. (Aug. 10, 2016), <https://www.justice.gov/opa/pr/former-us-state-department-employee-sentenced-57-months-extensive-computer-hacking> [<https://perma.cc/HKL9-X8JW>] (providing information on a former government employee who hacked and sextorted people for sexual images). A former U.S. State Department employee hacked one victim and then wrote in an e-mail "don't worry, it's not like I know where you live," and then e-mailed her home address and a threat to post her address and sexually explicit photographs to an "escort/hooker website." See *id.* (reporting that the former government employee was sentenced to fifty-seven months in prison for targeting hundreds of victims in the United States).

³⁵ See Georgios I. Zekos, *State Cyberspace Jurisdiction and Personal Cyberspace Jurisdiction*, 15 INT'L J.L. & INFO. TECH. 1, 1-3 (2007) (stating that the internet is set up to operate logically, not geographically, and that the internet allows users to communicate in other jurisdictions without any physical connection between the users).

³⁶ See Berg, *supra* note 31, at 1346-50 (describing how states' statutes authorizing extraterritorial criminal jurisdiction are used to prosecute cybercriminals outside of the states).

increasing the cybercriminal's punishment.³⁷ Also, because sextortion is a new crime, state legislatures must decide what the statutory unit of prosecution will be for sextortion or else courts will interpret the statute to find some unit of prosecution.³⁸ Currently, the federal government predominately pursues and prosecutes sextortion crimes, some of which are discussed next.³⁹

B. Examples of Sextortion

First, no exact number of sextortion cases have been officially identified, so the examples of sextortion discussed in this Note are cases that fit the definition of a sextortionate act.⁴⁰ Second, many people become victims of sextortion and most victims are women and children.⁴¹

³⁷ See *Moore v. Illinois*, 55 U.S. 13, 20 (1852) (holding that someone can be prosecuted by both the state and the federal government for the same act because it "may be an offence or transgression of the laws of both").

³⁸ See Christina M. Copey, Comment, *How Many Is "Any"?: Interpreting § 2252A's Unit of Prosecution for Child Pornography Possession*, 62 AM. U. L. REV. 1675, 1679 (2013) (establishing unit of prosecution to mean the unit of conduct the legislature intended to punish in the criminal statute). If the legislature is not specific in defining the unit of prosecution, courts could differ in interpreting the number of counts for an offense. See *id.* (noting that, for the sale of child pornography, a court could interpret the unit of prosecution to mean each image sold was an offense or each transaction as a whole was an offense).

³⁹ See *infra* Part II.B (discussing different sextortion examples).

⁴⁰ See Wittes, *supra* note 28, at 942 (emphasizing how the Justice Department did not have any idea how many sextortion cases there were). The example cases of sextortion found in this Note adhere to the FBI's definition of sextortion. See *What is Sextortion?*, *supra* note 14 (defining sextortion as "a serious crime that occurs when someone threatens to distribute your private and sensitive material if you [do not] provide them with images of a sexual nature, sexual favors, or money").

⁴¹ See J.D. Simkins, *Prisoners Stole More than \$500K from Troops through Dating App Sextortion Ring*, MIL. TIMES (Nov. 28, 2018), <https://www.militarytimes.com/news/your-army/2018/11/28/prisoners-steal-more-than-500k-from-troops-through-dating-app-sextortion-ring/> [<https://perma.cc/R94F-P734>]. Even United States military service members fall victim to sextortion schemes. See *id.* (explaining how soldiers were convinced to exchange naked photographs with the sextortionist and then later contacted by the undercover sextortionist's fake father who demanded money in exchange for not telling police about the soldier's exchange with the underage fake daughter). See also Julia Jacobs, *Inmates Ran 'Sextortion' Scam Targeting Military, Authorities Say*, N.Y. TIMES (Nov. 28, 2018), <https://www.nytimes.com/2018/11/28/us/south-carolina-inmates-sextortion.html> [<https://perma.cc/GK3B-GCJ3>] (exposing a sextortion scheme where prisoners and civilians sextorted United States soldiers). See also Debra Cassens Weiss, *Prison Inmates Indicted in Sextortion Ring that Targeted Military Service Members*, ABA J. (Nov. 29, 2018), http://www.abajournal.com/news/article/prison_inmates_are_indicted_in_sextortion_ring_that_targeted_military_servi/ [<https://perma.cc/TP9V-AFES>] (charging the inmates and ten people accused of helping the inmates).

1. Florida's Lucas Michael Chansler and Washington's Juvenile Perpetrator

Lucas Chansler, a thirty-one-year-old man from Florida, used numerous online personas—including profiles of six different fifteen-year-old boys, all involved in skateboarding—to trick underage girls into sending naked pictures or exposing themselves on their webcam and then sextorted the girls for more images.⁴² Chansler claimed that he targeted underage girls because older girls were immune to his scheme.⁴³ The FBI has been able to positively identify and register over 100 of Chansler's victims "located in 26 states, three Canadian provinces, and the United Kingdom."⁴⁴ Chansler was convicted of nine counts of production of child pornography and sentenced to 105 years in prison.⁴⁵

Across the country, at W.F. West High School in Chehalis, Washington, the FBI investigated reports that a sixteen-year-old boy posed as a female student and solicited explicit pictures from a male student.⁴⁶ The teenager possessed 900 explicit images, and his victims

⁴² See *Special Agent Discusses Sextortion Case*, FBI.GOV (Sept. 8, 2018), <https://www.fbi.gov/video-repository/newss-special-agent-discusses-sextortion-case/view> [<https://perma.cc/DE59-6K92>] [hereinafter *Special Agent*] (describing Chansler's sextortion crime). Chansler had conducted this sort of sextortion scheme for at least three years. See *id.* In one instance, he got a group of four girls to expose their breasts to who they thought was a fifteen-year-old boy they would never see again. See *id.* (illustrating how Chansler would deceive his victims). Much to their dismay, Chansler had taken a screen capture and came back as a different persona threatening to release the girls' photos unless they did certain poses for him. See *id.*

⁴³ See Alex Johnson, *FBI Looking for Hundreds of Florida Man's Sextortion Victims*, NBC NEWS (Jul. 7, 2015), <https://www.nbcnews.com/news/us-news/fbi-looking-hundreds-florida-mans-sextortion-victims-n388396> [<https://perma.cc/6PZ2-3YVA>] (focusing on Chansler's crimes and the more than 80,000 sexually explicit images and videos found on his computer). In fact, all Chansler's victims were between the age of thirteen and eighteen. See *id.* Chansler had informed the FBI that he had files of 50 victims but, in fact, he had nearly 350 files of young girls on his computer. See *Special Agent*, *supra* note 42 (characterizing how Chansler interacted with the police regarding his investigation). Each file contained notes indicating whether he had obtained all of the illicit images and videos he wanted from the victim, which victims were pending, and which victims he would try to go after again in the future. See *id.*

⁴⁴ See *id.* (formulating that Chansler had many victims and there are still approximately 250 victims that have not been identified by the FBI).

⁴⁵ See *Judgment in a Criminal Case, United States v. Chansler*, Case No. 3:10-cr-100-J-34PDB (M.D. Fla. Nov. 13, 2014), <https://www.courtlistener.com/recap/gov.uscourts.flmd.243947.197.0.pdf> [<https://perma.cc/Z2T4-TK5J>] [hereinafter *Judgment Chansler*] (depicting Chansler's punishment for his crimes).

⁴⁶ See Natalie Johnson, *Hundreds of Illicit Photos, Dozens of Victims Lead to FBI Investigation of Chehalis Teen*, THE CHRONICLE (Oct. 10, 2017), http://www.chronicle.com/crime/hundreds-of-illicit-photos-dozens-of-victims-lead-to-fbi/article_6d638dd4-ae12-11e7-8eb2-af78104bf4f5.html [<https://perma.cc/7B2G-8PJ5>] [hereinafter *Johnson, Hundreds of Illicit Photos*]. The FBI became involved after a parent told law officials her child was being victimized by someone online. See *id.* (detailing how the incident was discovered). More

included at least ten fellow students.⁴⁷ He created multiple social media profiles for a female alter ego and used explicit images of women he found online to ask his male classmates to exchange explicit pictures and videos.⁴⁸ If the victims wanted to stop sending pictures, the teen would threaten to send the explicit pictures and videos to the victims' family and friends—in several instances, he followed through with his threat.⁴⁹ The Chehalis teenager pled guilty to three counts of first degree dealing in depictions of minors engaged in sexually explicit conduct, one count of possession of such depictions, and eight counts of second-degree extortion, and he received probation and mandated counseling under Washington's juvenile sex offender program.⁵⁰

2. Luis Mijangos, the "Hacker"

In California, Luis Mijangos hacked into his victims' computers and used the information he obtained to play psychological games with his victims by threatening to post the captured images or videos on the internet unless the victims provided more pictures.⁵¹ On one occasion,

victims came forward during the FBI's investigation. *See id.* (indicating that more students then told parents about their personal incidents with the teen).

⁴⁷ *See id.* (providing information on the teenager sextortionist's crimes). The teenager referred to himself as a "predator," and according to reports, admitted to having hundreds of victims. *See id.*

⁴⁸ *See* Natalie Johnson, *Chehalis Teen Pleads Guilty to 12 Felonies in 'Sextortion Case,' Sentenced to Treatment*, THE CHRONICLE (Mar. 9, 2018), http://www.chronline.com/crime/chehalis-teen-pleads-guilty-to-felonies-in-sextortion-case-sentenced/article_8d87c212-23ea-11e8-bff4-8b8134c5f7e5.html [<https://perma.cc/WBG6-J7W4>] [hereinafter Johnson, *Pleads Guilty*] (stressing the extent the teenager sextortionist went to sextort pictures from his classmates).

⁴⁹ *See id.* There are other teenagers who have done similar acts. *See* Jake Lahut, *Teen Gets 10 Years Probation in Online Sex Extortion Case*, DAILY GAZETTE (June 19, 2018), <https://dailygazette.com/article/2018/06/19/teen-gets-10-years-probation-in-online-sex-extortion-case> [<https://perma.cc/VBU7-5KUF>] (explaining how a teenager who blackmailed girls into sending him naked photos received ten years of probation and was required to register as a sex offender).

⁵⁰ *See* Johnson, *Pleads Guilty*, *supra* note 48 (accounting for what went on during the teenager sextortionist's hearing). Washington's juvenile sex offender program is known as the Special Sex Offender Disposition Alternative. *Id.*

⁵¹ *See* Government's Objections to the PSR and Sentencing Position, *United States v. Mijangos*, CR No. 10-743-GHK, 1, 1 (C.D. Cal. July 20, 2011), <https://www.courtlistener.com/recap/gov.uscourts.cacd.476967.54.0.pdf> [<https://perma.cc/L6HG-2ZXV>] [hereinafter Government's Objections Mijangos] (advocating for a longer sentence for Mijangos). Mijangos followed through with his threat on at least one occasion. *See id.* He also would assume the digital identity of victims' boyfriends and trick them into creating and sending him explicit pictures and videos. *See id.* Mijangos's malware infected over 100 computers that were used by approximately 230 people. *See* *Hacker Charged with Extortion for Sex Videos*, ABC 7 EYEWITNESS NEWS (June 22, 2010), <https://abc7chicago.com/archive/7514640/> [<https://perma.cc/5VDF-DSKJ>] (commenting that at least 44 of the 230 victims

after Mijangos had infected a couple's computers, he instant messaged the girlfriend, asked her to have web sex, and sent her naked pictures of herself he had obtained from her boyfriend's computer.⁵² The girl then instant messaged her boyfriend about Mijangos, who could see their correspondence, so he threatened the couple with inappropriate pictures he obtained from their computers.⁵³ The girlfriend called the police, but Mijangos found out and sent additional threatening emails.⁵⁴

After hacking into a different victim's computer, Mijangos sent an email to her with the subject line "who hacked your account READ it!!!" and then pretended that he was hired by her ex-boyfriend to hack her account but that he would help her.⁵⁵ When the victim did not respond, Mijangos sent an email with a naked picture of the victim and stated that he would post the picture on Facebook and Myspace.⁵⁶ When Mijangos discovered that the victim had sent her friend copies of their conversation, he posted naked pictures of the victim on her friend's Myspace page.⁵⁷ Eventually, Luis Mijangos was sentenced to six years in prison after being convicted of accessing protected computers to obtain information and wiretapping.⁵⁸

were minors). Mijangos also remotely accessed and turned on victims' webcams to try and catch them in intimate situations and was occasionally successful. *See id.*

⁵² *See* Government's Objections Mijangos, *supra* note 51, at 15–16. Mijangos also obtained pictures of the couple having web sex. *See id.*

⁵³ *See id.* at 16. He was able to intercept the couple's oral communications. *See id.* (indicating how Mijangos could control his victims).

⁵⁴ *See id.* at 16–17. When campus police came into the girlfriend's dormitory room to talk with her, Mijangos was listening to their conversation through her roommate's hacked computer. *See id.* The couple experienced emotional distress—the girlfriend "did not leave her dorm room for a week after the episode" and the boyfriend had emotional problems. *See id.* at 16 (clarifying the harm caused to the victims).

⁵⁵ *See id.* at 18–19 (indicating that the victim had a restraining order against her ex-boyfriend, who was on probation for harassing her).

⁵⁶ *See id.* at 19 (explaining how Mijangos would exert control over his victims). He also told the victim he was part of a "team of hackers." *See id.* (professing that Mijangos held himself out to be a professional hacker).

⁵⁷ *See id.* (stressing that Mijangos would follow through with his threats). Mijangos hacked into the friend's Myspace page and then posted the victim's naked pictures. *See id.* When the FBI interviewed the victim, she said she felt like her life had been taken away from her. *See id.*

⁵⁸ *See* Judgment and Probation/Commitment Order, United States v. Mijangos, Cause No. 2:10-cr-00743-GHK (C.D. Cal. Sept. 16, 2011), <https://www.courtlistener.com/recap/gov.uscourts.cacd.476967/gov.uscourts.cacd.476967.79.0.pdf> [<https://perma.cc/94LK-SQEA>] [hereinafter Judgment and Probation Mijangos] (providing the sentencing details for Mijangos).

3. Richard Finkbiner, the “Catfish”

Richard Finkbiner, from Brazil, Indiana, used social network websites to contact people, including minors, through video chat sessions, and by misrepresenting his identity he would entice people to engage in sexual activity that he would then record.⁵⁹ Finkbiner would then threaten to upload the captured image or video to pornographic websites, or send it to friends, family, people at school, and the general public, unless his victims agreed to email him, meet him on a non-anonymous video chat website, and follow his demands.⁶⁰ Finkbiner would demand that his victims disrobe, sexually stimulate themselves, engage in sexual acts, or perform some other humiliating and degrading sexual conduct.⁶¹

Finkbiner forced a fourteen-year-old male victim to perform various humiliating sexual acts on the victim’s self and then told the victim to bring a twelve-year-old boy with him and perform oral sex on the boy during the next chat session.⁶² The victim invited a friend to come over but had an emotional breakdown before he could follow through with Finkbiner’s demands.⁶³ Finkbiner showed no remorse for what he put his victims through and knew his actions were criminal.⁶⁴

⁵⁹ See Government’s Sentencing Memorandum, United States v. Finkbiner, Cause No. 2:12-CR-0021-WTL-CMM, Cause No. 2:13-CR-0002-WTL-CMM, 1, 2–3 (S.D. Cal. June 18, 2013), <https://www.brookings.edu/wp-content/uploads/2016/05/Finkbiner-Sentencing-Memo.pdf> [<https://perma.cc/JNR8-UUZH>] [hereinafter Finkbiner Sentencing] (arguing for Finkbiner’s sentencing to reflect the seriousness of his offenses). During the initial video with the unsuspecting victim, he used software that used previously recorded video feed and made it appear as if it was coming from his webcam. See *id.* (explaining how Finkbiner would show pornographic videos of adults and minors to his victims to induce them to engage in sexual activity that he would secretly record).

⁶⁰ See *id.* at 3 (highlighting the extent of control Finkbiner would attempt to exert over his victims and how Finkbiner would tell his victims that they were now his “cam slaves”).

⁶¹ See *id.* at 3, 4, 8, 10, 11 (providing vulgar details of Finkbiner’s treatment of his victims). Humiliating sexual conduct included the following: having males put on a dress and underwear belonging to a female family member, having someone expose themselves out their bedroom window, having males eat their ejaculate, having males show and/or penetrate their own anus, having males stimulate sex with a pillow, and more. See *id.*

⁶² See Finkbiner Sentencing, *supra* note 59, at 13–14 (describing the sort of psychological harm Finkbiner caused his victims).

⁶³ See *id.* at 14. The victim did not tell his friend why he wanted him over. *Id.* Fortunately for the victim, when he broke down emotionally, he decided to tell his brother, who told their parents, who then contacted the police. *Id.*

⁶⁴ See *id.* at 9–10 (bringing up a conversation between Finkbiner and one of his victims in which Finkbiner acknowledges and dismisses his criminal act). When Finkbiner demanded that a fifteen-year-old boy be his “cam slave,” the boy emailed Finkbiner telling him that he was underage and that Finkbiner was breaking the law and could be arrested, but Finkbiner responded:

ok let me get all this out of the way
1 this isnt my first time doing this.

Finkbiner threatened another victim, this time a seventeen-year-old girl, and claimed he would publish an explicit video of her to pornography websites and send copies to her teachers and friends unless she agreed to be his “cam slave,” and the girl agreed.⁶⁵ The day after she performed sexual acts for Finkbiner, the victim emailed him that she attempted to commit suicide the previous night and will attempt to kill herself again, to which he replied, “Glad i could help.”⁶⁶ Finkbiner had similar interactions with at least 153 individuals.⁶⁷ Ultimately, Finkbiner was charged with six counts of sexual exploitation of children in 2011, five counts of sexual exploitation of children in 2012, two counts of extortion, and one count of possession of child pornography, and he was sentenced to fifty years in prison.⁶⁸

C. *Alternative Statutes Used for Sextortion Cases*

Sextortionists who target adults can be prosecuted under two general criminal categories, extortion and computer crimes.⁶⁹ Sextortionists have

2 yes it is illegal im ok with that
 3 i know ur dad/mom/uncle/friend is a cop/fbi/cia thats fine
 4 i wont get caught im a hacker i covered my tracks
 5 if you dont play i promise ill [expletive deleted] ur life over
 6 who is the cute girl ur with in ur facebook profile pic?
 so u gonna play or b a gay porn star?[sic]

Id. The boy then complied with Finkbiner’s requests and engaged in degrading sexual acts like penetrating his anus, stripping, and sexually stimulating himself. *See id.* at 9–10.

⁶⁵ *See id.* at 10 (providing the intimate knowledge Finkbiner would obtain and use against his victims, like how he could identify five individuals and the victim’s high school by name). He had the victim strip to her underwear, play with her breasts, and show him her genitals up close. *See id.*

⁶⁶ *See id.* at 11. The victim’s family verified that she had, in fact, attempted or threatened to commit suicide after her interaction with Finkbiner, so she was subsequently hospitalized on a seventy-two-hour hold. *Id.*

⁶⁷ *See id.* at 3, 4, 13, 15 (covering the vast number of victims Finkbiner managed to target). Finkbiner had approximately 754 video and 47,000 image files on his computer he had obtained from the internet, most depicting sexually explicit conduct involving minors, and an additional 22,204 video files captured by Finkbiner during his webcam scheme. *Id.* Finkbiner told authorities he had downloaded the images and videos because he was interested in child pornography. *See id.* at 13 (stressing that Finkbiner explicitly admitted to his interest in child pornography). Finkbiner had worked as a Sunday school teacher, taking children on field trips and camping excursions right around the time he first started his webcam scheme. *Id.* at 15

⁶⁸ *Id.* at 22.

⁶⁹ *See* 18 U.S.C. § 875 (2012) (outlawing interstate extortion). This Note uses the federal extortion statute because it can become applicable in every state. For purposes of this Note, accessing protected computers to obtain information, wiretapping, and stalking are considered types of computer crimes. *See* 18 U.S.C. § 1030(a)(2)(C) (2012) (accessing computers to obtain information); 18 U.S.C. § 2511(1)(a) (2012) (wiretapping); 18 U.S.C. § 2261(a) (2012) (stalking). A sextortionist in Texas pled guilty to cyberstalking, among other

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been charged with extortion for their acts.⁷⁰ Violation of the federal extortion statute is punishable by up to two years in prison.⁷¹ Computer crimes, apart from any computer crime involving child victims, include sentencing between one year and ten years.⁷² For example, under the federal extortion statute, Luis Mijangos was convicted of accessing protected computers to obtain information and wiretapping.⁷³

When the victims of sextortionists are juveniles, the sextortionists are typically charged with laws specific to their underage victims.⁷⁴ The government places great importance on protecting children and bringing those who entice and compromise children to justice.⁷⁵ Those who sextort juveniles often face harsher sentences because of their victims' ages.⁷⁶

crimes, when he would threaten to post naked pictures of his victims on the internet unless they sent him more sexually explicit pictures. See U.S. Attorney's Office Western District of Texas, *Del Rio Man Sentenced to Federal Prison on Cyberstalking and Child Pornography Charges*, U.S. DEP'T JUST. (Dec. 8, 2016), <https://www.justice.gov/usao-wdtx/pr/del-rio-man-sentenced-federal-prison-cyberstalking-and-child-pornography-charges> [<https://perma.cc/2RDZ-H944>].

⁷⁰ See Finkbiner Sentencing, *supra* note 59, at 22 (charging Finkbiner with extortion). See Indictment, United States v. Chansler, Cause No. 3:10-cr-100-J-34TEM (M.D. Fla. Apr. 15, 2010), <https://www.courtlistener.com/recap/gov.uscourts.flmd.243947.1.0.pdf> [<https://perma.cc/D5KA-3VUC>] (indicating that Chansler was initially charged with extortion). See Johnson, *Pleads Guilty*, *supra* note 48 (reporting the crimes the teenager was charged with included second-degree extortion). See also WASH. REV. CODE ANN. § 9A.56.130 (Westlaw through 2018) (analyzing the crime of extortion in the second degree). See also 18 U.S.C. § 875 (2012) (prohibiting interstate extortion).

⁷¹ See 18 U.S.C. § 875 (2012) (punishing those convicted under this statute with up to two years in prison).

⁷² The sentencing range for persons committing crimes like Mijangos under the federal statute is between one and ten years for accessing a computer without authorization and no more than five years for wiretapping. See 18 U.S.C. § 1030(c)(1)(A) (2012) (obtaining information from a computer without authorization); 18 U.S.C. § 2511(4)(a) (2012) (punishing for wiretapping).

⁷³ See Judgment and Probation Mijangos, *supra* note 58 (imprisoning Mijangos seventy-two months for his crime). See also 18 U.S.C. § 1030(a)(2)(C) (2012) (criminalizing the act of accessing a computer without authorization); 18 U.S.C. § 2511(1)(a) (2012) (making it a crime to wiretap others).

⁷⁴ These charges include and are not limited to the following: sexual exploitation of children, certain activities relating to material involving the sexual exploitation of minors, and certain activities relating to material constituting or containing child pornography, all of which can result in imprisonment between five and thirty years for a first-time offender. See 18 U.S.C. § 2251 (2012) (exploiting children sexually is a crime); 18 U.S.C. § 2252 (2012) (engaging in activities sexually exploiting children is a crime); 18 U.S.C. § 2252A (2012) (participating in activities related to material containing child pornography).

⁷⁵ See Project Safe Childhood, *About Project Safe Childhood*, U.S. DEP'T JUST. (Apr. 19, 2016), <https://www.justice.gov/psc/about-project-safe-childhood> [<https://perma.cc/H3PW-DCA3>] (creating programs designed to protect children from being victimized).

⁷⁶ See U.S. Attorney's Office Southern District of Indiana, *U.S. Attorney Joseph Hogsett Announces Sentencing of Clay County Sextortion Defendant*, FBI.GOV (June 26, 2013), <https://archives.fbi.gov/archives/indianapolis/press-releases/2013/u.s.-attorney-joseph->

However, underage sextortionists are typically punished differently than their adult counterparts.⁷⁷

D. Legislative Reaction to Sextortion

Currently, only five states have responded to sextortion by passing laws that explicitly prohibit the act.⁷⁸ In addition, Congress has introduced a sextortion statute.⁷⁹ This Part discusses the California, Utah, and Arkansas statutes pertaining to sextortion, followed by a discussion of the pending federal law.⁸⁰

hogsett-announces-sentencing-of-clay-county-sex-tortion-defendant [https://perma.cc/NNJ9-SYGS] [hereinafter *U.S. Attorney Joseph Hogsett*] (sentencing Finkbiner for his crimes). Richard Finkbiner was sentenced to forty years in prison, lifetime federally supervised release at the end of his prison term, must register as a sexual offender, and he was fined \$70,000. *See id.* Luis Chansler was sentenced to 105 years in prison for nine counts of production of child pornography, under 18 U.S.C. § 2251(a). *See* Judgment Chansler, *supra* note 45 (punishing Chansler for his crimes).

⁷⁷ *See* Johnson, *Pleads Guilty*, *supra* note 48 (informing on what transpired during the teenager sextortionist's hearing). For example, the teen sextortionist from Chehalis, Washington, pled guilty to some of his actions committed against other juveniles but received a Special Sex Offender Disposition Alternative. *Id.* At the teen's disposition hearing, he told the court, "I think I'd like to say I am definitely sorry for the things I've done and the hurt that has been caused to people who don't deserve it." *Id.* He pled guilty to twelve felony charges including three counts of first-degree dealing in depictions of minors engaged in sexually explicit conduct, one count of possession of such depictions, and eight counts of second-degree extortion. *Id.* Washington's Special Sex Offender Disposition Alternative requires juveniles to serve a two-year probation term, with their standard range commitment time at an institution suspended. *See* Marco Salas & Shelby Zamberlin, *Special Sex Offender Disposition Alternative*, PIERCE CTY. (Sept. 15, 2018), <https://www.co.pierce.wa.us/DocumentCenter/View/233/Juvenile-Court-SSODA?bidId=> [https://perma.cc/7HEC-4RBQ] (giving teenager offenders a chance at rehabilitation). Another example of an underage sextortionist is that of a fifteen-year-old Iowa student who begged a girl to exchange naked pictures with him and threatened to show people the photo unless she sent more. *See* Grant Rodgers & Regina Zilbermints, *Authorities: Teen Used Girl's Nude Photos for Blackmail*, DES MOINES REG. (Oct. 15, 2014), <https://www.usatoday.com/story/news/nation/2014/10/15/student-used-girls-nude-photos-for-blackmail-authorities-say/17338981/> [https://perma.cc/N986-GHBU].

⁷⁸ *See* Lancianese, *supra* note 15 (discussing Pennsylvania's sextortion bill and the states that already have sextortion statutes in place). The states with sextortion statutes include Alabama, Arkansas, California, Texas, and Utah. *Id.*

⁷⁹ *See* Online Safety Modernization Act of 2017, H.R. 3067, 115th Cong. § 2751 (2017) (criminalizing sextortion). Congress recognized that sextortion is different than acts against children by proposing a separate statute for sextortion. *Id.*

⁸⁰ *See infra* Sections II.D.1–D.2 (exploring the current and proposed sextortion laws). The state statutes also punish sextortionists through fines, but for purposes of this Note, only punishment involving imprisonment will be discussed because assessing how fines are determined would go beyond the scope of this Note.

1. State Sextortion Statutes

In October 2017, the California legislature revised its extortion statute to include elements of sextortion.⁸¹ Now, a person charged under the revised California statute for sextortion faces the same charges as a person who commits extortion.⁸² California also expressly exempts persons under the age of eighteen from being charged with sexual extortion.⁸³ In California, the charge for extortion ranges from two to four years.⁸⁴

Similar to California, Utah approved a sexual extortion bill in March 2017, stating that an individual who is eighteen or older commits sextortion when, intending to coerce a victim to engage in sexual activity, the individual threatens “the victim’s person, property, or reputation” or threatens to disseminate a sexually explicit picture or video of the victim.⁸⁵ An individual commits a separate offense for each separate victim the individual subjects to sexual extortion and for each separate occurrence.⁸⁶ An offender is charged the same, regardless of his or her success in sextorting a victim.⁸⁷ Utah’s statute also states that an individual is found

⁸¹ See CAL. PENAL CODE § 518 (Westlaw through 2018) (outlawing sextortion). Senator Connie M. Leyva had introduced the legislation to criminalize sexual extortion because “[p]erpetrators rob their victims of their sense of safety and dignity when they threaten release of sexually explicit pictures.” *SB 500 Protects Minors, Young Women, Others from Sexual Extortion*, SENATOR CONNIE M. LEYVA (Feb. 16, 2017), <https://sd20.senate.ca.gov/news/2017-02-16-senator-leyva-it-s-time-criminalize-sex extortion> [https://perma.cc/PKS3-DMAX]. The amended law does not replace other laws that might apply to the offenders, such as rape, sexual battery, or other laws that might apply when minors are involved. See *id.* (discussing why sextortion legislation is important).

⁸² See CAL. PENAL CODE § 520 (Westlaw through 2018) (punishing those who commit sextortion the same as those who commit extortion). The legislature changed “consideration” in the statute to include “anything of value, including sexual conduct . . . or an image of an intimate body part.” *Id.*

⁸³ See CAL. PENAL CODE § 518 (Westlaw through 2018). Persons under the age of eighteen still can be charged with extortion, but the California legislature limited the ways that juveniles could commit extortion. See *id.* (stating who the California extortion statute applies to). The statute section defining extortion “does not apply to a person under 18 years of age who has obtained consideration consisting of sexual conduct or an image of an intimate body part.” *Id.*

⁸⁴ See PENAL § 520 (criminalizing sexual extortion and extortion under the same statute).

⁸⁵ UTAH CODE ANN. § 76-5b-204(2) (Westlaw through 2018) (outlawing sextortion).

⁸⁶ See *id.* § 76-5b-204(5) (charging a new offense for each victim and occasion sextortion occurs). An individual can also be “charged and convicted of a separate criminal act if the individual commits the separate criminal act while the individual violates or attempts to violate this section.” *Id.* § 76-5b-204(6).

⁸⁷ See *id.* § 76-5b-204(2) (granting a charge for sextortion when a threat is transmitted, and an additional charge should the victim engage in a sexual act). Section 2(a) states that sextortion is committed when a threat is communicated, and section 2(b) states that sextortion is committed when the offender causes the victim to engage in some sort of sexual action. *Id.* Both acts are third-degree felonies, unless otherwise indicated. See *id.* § 76-5b-204(3).

to have committed aggravated sexual extortion if any of the circumstances listed within the statute has been admitted or found to be true during the action of the offense.⁸⁸ Depending on the degree of sextortion committed, a sextortionist can face up to life in prison.⁸⁹

Arkansas passed a sexual extortion bill in March 2017 that makes it a crime to issue a threat to get a person to engage in sexual activities or produce a recording of the person naked or engaging in sexually explicit conduct.⁹⁰ According to the statute, a person must threaten to “[d]amage the property or harm the reputation of the other person[] or [p]roduce or distribute a recording of the other person engaged in sexually explicit conduct or depicted in a state of nudity”⁹¹ A single sextortion charge is a Class B Felony and can result in imprisonment between five and twenty years.⁹²

2. Federal Proposed Sextortion Statute

In 2017, Congress introduced a bill that would “establish certain criminal violations for various aspects of harassment using the interstate

⁸⁸ See UTAH CODE ANN. § 76-5b-204(4) (giving the aggravating factors for sextortion). Here are some of the circumstances by which sexual extortion is aggravated: the victim is underage or a vulnerable adult; the offense was committed with a dangerous weapon, violently, fraudulently, or by threat of physical harm, or during a kidnapping; the offense caused the victim bodily injury or severe psychological injury; the offender and victim were strangers or the offender became the victim’s friend to commit the offense; the offender was previously convicted of a sexual offense; the offender was in a position of special trust relating to the victim; the offender was involved with the victim’s prostitution or sexual acts; or the offender “caused the penetration, however slight, of the genital or anal opening of the victim by any part or parts of the human body, or by any other object.” *Id.* This is very similar to other crimes, such as murder, where the character of the offense results in higher charges. See Jonathan Simon, Comment, *How Should We Punish Murder?*, 94 MARQ. L. REV. 1241, 1272 (2011) (noting that the difference between the degrees of murder is “measured by the character of the particular homicide”).

⁸⁹ See UTAH CODE ANN. § 76-5b-204(3) (providing that sexual extortion is a third-degree felony, aggravated sexual extortion of an adult is a second-degree felony, and aggravated sexual extortion of a child or a vulnerable adult is a first-degree felony). A person convicted of a felony in the third degree may be sentenced up to five years. See UTAH CODE ANN. § 76-3-203(3) (Westlaw through 2018). A person convicted of a felony in the second degree may be sentenced between one year and fifteen years. See *id.* § 76-3-203(2). A person convicted of a felony in the first degree may be sentenced starting at five years to possibly life. See *id.* § 76-3-203(1).

⁹⁰ The statute does not explicitly state whether those under the age of eighteen are exempt. See ARK. CODE ANN. § 5-14-113 (Westlaw through 2018) (codifying sextortion as a crime).

⁹¹ *Id.*

⁹² See *id.* (making sextortion a Class B Felony); ARK. CODE ANN. § 5-4-201(a) (Westlaw through 2018) (punishing with fines); ARK. CODE ANN. § 5-4-401(a) (Westlaw through 2018) (imprisoning for felonies).

telecommunications system, and for other purposes.”⁹³ All offenses in this bill require the defendant to commit the act by “mail or any facility or means of interstate or foreign commerce.”⁹⁴ All offenses involving minors between the ages of twelve and eighteen result in an increase of five years to the maximum term of imprisonment authorized for the offense committed, and the maximum term of imprisonment authorized for the offense committed doubles for offenses involving minors under the age of twelve.⁹⁵ A person who commits an offense outlined in this bill that results in serious bodily injury of any person shall be imprisoned for no more than twenty years, and should the offense result in the death of any person, the actor shall be imprisoned for any number of years or for life.⁹⁶

Of interest to this Note is the section pertaining to coerced production of sexually intimate visual depictions.⁹⁷ Congress would criminalize the act of “knowingly caus[ing] any person to produce a sexually intimate

⁹³ Online Safety Modernization Act of 2017, H.R. 3067, 115th Cong. § 2751 (2017) (proposing an amendment to criminalize sexual extortion). Other crimes, such as swatting – falsely communicating a need for an emergency response – and doxing – publishing another’s personal information intending to cause the person harm in doing so – are also included in the bill. See H.R. 3067, 115th Cong. § 1041, § 881 (2017).

⁹⁴ H.R. 3067, § 2751. For coercion of sexual acts and coercion of sexual contact, Congress distinguishes the act of knowingly causing someone to engage in a sexual act or sexual contact with another “through coercion, fraud, or a threat to injure the person, property, or reputation of any person” from the act of “knowingly transmit[ing] any communication containing a threat to injure the person, property or reputation of any person.” *Id.* Regarding coercion of sexual acts, the former can result in imprisonment for any number of years or for life, and the latter can result in imprisonment for no more than five years. *Id.* Regarding coercion of sexual contact, the former act can result in imprisonment for no more than ten years and the latter can result in imprisonment for no more than five years. All such offenses can result in fines. See *id.* § 2751, § 2752 (providing the length of time potentially served for committing such an offense).

⁹⁵ See *id.* § 2756 (increasing the punishment when juveniles are victimized). The bill does not separate offenders who are under the age of eighteen. See *id.* § 2751 (requiring punishment depending on the act committed, but not the age of the offender). Only the section for coerced production of sexually intimate visual depictions has a separate provision for offenses involving minors if the sexually intimate visual depiction constitutes child pornography. See *id.* § 2753(d) (recognizing a different offense as committed against juvenile victims). The offender shall be punished as provided under the crime of sexual exploitation of children, which, depending on prior convictions for similar conduct, can result in imprisonment between fifteen years to life. See 18 U.S.C. § 2251(e) (2012) (granting a specific sentence for those who commit this crime against children).

⁹⁶ See H.R. 3067, § 2757 (assigning the punishment for when death occurs during the act of sextortion). Congress also increases the maximum term of imprisonment for violators who have a prior sex offense conviction to twice the term of imprisonment authorized for the offense. See *id.* § 2759. Congress intends the penalties for this crime to match “the nature of the visual depiction, the acts engaged in, and the potential harm resulting from the offense; the number and age of the victims involved; and the degree to which the victims have been harmed.” *Id.* § 2763(c).

⁹⁷ See *id.* § 2753(a).

visual depiction of any person through coercion, fraud, or a threat to injure the person, property, or reputation of any person.”⁹⁸ The person shall be imprisoned for any number of years or for life if a sexual act with another results, and the person shall be imprisoned no more than twenty years for any other commission of this act.⁹⁹

III. ANALYSIS

Sextortion is a unique offense because it is committed remotely with ease, and online sextortionists have a variety of victims to choose from and a plethora of methods to extract what they want.¹⁰⁰ However, without a sextortion statute, prosecutors are limited with what they can charge sextortionists, which often results in unpredictable charges.¹⁰¹ Even among the states with sextortion statutes, a captured sextortionist may face anywhere from no time to over one hundred years in prison.¹⁰² Part III identifies the various ways in which sextortion is prosecuted and the laws associated with sextortion.¹⁰³ First, Part III.A discusses charging sextortion under statutes that do not explicitly criminalize sextortion.¹⁰⁴ Second, Part III.B examines the state laws enacted specifically for sextortion, as well as the federal bill explicitly criminalizing sextortion.¹⁰⁵

⁹⁸ *Id.* To commit the act of coerced production of sexually intimate visual depictions, the person must use “mail or any facility or means of interstate or foreign commerce to cause any person to produce a sexually intimate visual depiction of any person,” the visual depiction was actually “transported or transmitted using any means or facility of [or affecting] interstate or foreign commerce,” and some part of the offense occurred in some jurisdiction of the United States. *Id.* § 2753(b).

⁹⁹ See H.R. 3067, § 2753(a) (outlining the term of years to be served for each offense). Threats that do not result in the victim’s compliance will still result in criminal penalties. See *id.* § 2753(c) (stressing that threats alone will result in punishment). The bill provides that whoever transmits a communication to another person threatening to “injure the person, property, or reputation of any person” unless the person produces a “sexually intimate visual depiction of any person” can face up to five years in prison. *Id.*

¹⁰⁰ See Georgios I. Zekos, *State Cyberspace Jurisdiction and Personal Cyberspace Jurisdiction*, 15 INT’L J.L. & INFO. TECH. 1, 22–23 (2007) (stating that the internet allows for people to victimize others in other jurisdictions without having to be physically present in that jurisdiction).

¹⁰¹ See Judgment and Probation Mijangos, *supra* note 58 (charging Mijangos with computer crimes). See Finkbinder Sentencing, *supra* note 59, at 22 (bringing child pornography charges against Finkbinder). See Judgment Chansler, *supra* note 45 (imprisoning Chansler for child pornography crimes).

¹⁰² Compare CAL. PENAL CODE § 518 (exempting juvenile offenders from being able to commit the sextortion portion of the statute), and CAL. PENAL CODE § 520 (punishing sextortion with up to four years imprisonment), with UTAH CODE ANN. § 76-5b-204(2) (penalizing sextortion with an uncapped number of years and not exempting juveniles).

¹⁰³ See *infra* Part III.A & Part III.B.

¹⁰⁴ See *infra* Part III.A.

¹⁰⁵ See *infra* Part III.B.

A Prosecuting Sextortion under Other Laws

Before statutes explicitly criminalizing sextortion were passed, sextortionists were convicted for other crimes.¹⁰⁶ Sextorting an adult brought charges for extortion or computer crimes, which resulted in being imprisoned for two to ten years, and none of the crimes criminalized sextortion.¹⁰⁷ The crimes committed against adults were especially sexual in nature, yet the sextortionists were charged as if they had only tampered with a computer or tried to extort money.¹⁰⁸

However, sextortionists can face grossly disproportionate punishment if they have child victims.¹⁰⁹ For example, Luis Mijangos was sentenced to seventy-two months in prison even though he sextorted children because the state did not charge him with crimes against children.¹¹⁰ But Luis Chansler was sentenced to 105 years in prison for sextorting children.¹¹¹ Even among sextortionists who were charged under similar laws—Richard Finkbiner and Luis Chansler were both charged with crimes relating to offenses against children—the resulting sentences were drastically inconsistent.¹¹² Also, if a juvenile sextorts child victims, the juvenile typically receives a lighter sentence than an adult sextortionist.¹¹³ Without a law explicitly criminalizing sextortion,

¹⁰⁶ See Judgment and Probation Mijangos, *supra* note 58 (providing the charges faced by Mijangos, none of which included sextortion). See Finkbiner Sentencing, *supra* note 59, at 22 (convicting Finkbiner of crimes other than sextortion). See Judgment Chansler, *supra* note 45 (imprisoning Chansler for charges unrelated to the act of sextortion).

¹⁰⁷ See Judgment and Probation Mijangos, *supra* note 58 (stating that Mijangos was charged for accessing a computer without authorization and wiretapping). See Weiss, *supra* note 41 (charging the inmates and ten people accused of helping the inmates with money laundering, extortion, and wire fraud conspiracy).

¹⁰⁸ See Judgment and Probation Mijangos, *supra* note 58 (giving the sentencing details for Mijangos).

¹⁰⁹ Compare Judgment and Probation Mijangos, *supra* note 58 (charging Mijangos, for the first time, for a sextortion-like offense for which he received seventy-two months imprisonment), with Finkbiner Sentencing, *supra* note 59, at 22 (convicting Finkbiner with his first child offense and sentencing him to forty years imprisonment), and Judgment Chansler, *supra* note 45 (imprisoning Chansler for 105 years for his first child offense).

¹¹⁰ See Judgment and Probation Mijangos, *supra* note 58 (committing sextortion against victims, including juveniles, did not result in any juvenile specific charge for Mijangos).

¹¹¹ See Judgment Chansler, *supra* note 45.

¹¹² Richard Finkbiner was sentenced to fifty-five more years in prison than Luis Chansler. See Finkbiner Sentencing, *supra* note 59, at 22. Compare *U.S. Attorney Joseph Hogsett*, *supra* note 76 (detailing Finkbiner's punishment), with Judgment Chansler, *supra* note 45 (indicating Chansler's punishment).

¹¹³ Compare Johnson, *Pleads Guilty*, *supra* note 48 (punishing a teenager with two years of probation), with *U.S. Attorney Joseph Hogsett*, *supra* note 76 (imposing a forty-year sentence on Finkbiner), and Judgment Chansler, *supra* note 45 (incarcerating Chansler for 105 years in prison).

prosecutors are forced to affix a different crime to sextortion.¹¹⁴ Based on the examples discussed, laws must be consistent to ensure that justice is accurately served.¹¹⁵

B Legal Reaction to Sextortion

Currently, few states have statutes explicitly prohibiting sextortion.¹¹⁶ The state statutes prohibiting sextortion are consistent in determining it is a crime but vary regarding who can commit sextortion, how it is committed, and how it is punished.¹¹⁷ Section III.B.1 addresses the similarities and differences among the state statutes.¹¹⁸ Then, Section III.B.2 explores the federal bill criminalizing sextortion and how it compares to the state statutes.¹¹⁹

1. States United against Sextortion, Divided by Statute

California, Utah, and Arkansas have sextortion laws that differ on whether to charge juveniles for sextortion. For example, California and Utah explicitly exempt those under eighteen years of age from punishment.¹²⁰ This is problematic because juveniles are just as capable of committing sextortion as their adult counterparts, and juveniles sextort other juveniles as well.¹²¹ Exempting juveniles from being charged for sextortion requires prosecutors to continue affixing other charges to

¹¹⁴ See Judgment and Probation Mijangos, *supra* note 58 (convicting Mijangos of accessing protected computers and wiretapping for his sextortionate acts). See also Weiss, *supra* note 41 (charging those who committed sextortion with money laundering, extortion, and wire fraud conspiracy).

¹¹⁵ See *supra* Parts II.B & II.C (explaining the varying charges faced by sextortionists).

¹¹⁶ See Lancianese, *supra* note 15 (mentioning Pennsylvania's sextortion bill in the legislature and the other states with sextortion statutes).

¹¹⁷ Compare CAL. PENAL CODE § 518 (criminalizing sextortion), with UTAH CODE ANN. § 76-5b-204(2) (outlawing sextortion), and ARK. CODE ANN. § 5-14-113 (codifying a sextortion statute).

¹¹⁸ See *infra* Section III.B.1.

¹¹⁹ See *infra* Section III.B.2.

¹²⁰ See *supra* Section II.D.1 (reporting the statutes that exempt juveniles who sextort from punishment for sextortion). California's statute is really an extortion statute that—has the shortest sentencing out of the three statutes discussed in this Note and—was amended to include the offense of sextortion. See CAL. PENAL CODE § 518 (disallowing any extortionate act, which recently includes acts of sexual extortion). Utah's statute has the longest potential sentencing out of the three state statutes. See § 76-5b-204(2) (allowing for each separate act and each separate victim to count as one act). Arkansas has an ambiguous statute, and aside from vagueness, its composition falls somewhere between the other two statutes. See § 5-14-113 (creating a new crime that is separate from extortion but not offering much guidance as to how many times a prosecutor can charge someone for sextortion).

¹²¹ See Johnson, *Hundreds of Illicit Photos*, *supra* note 46 (writing about the teenager who sextorted fellow high school students).

juvenile conduct, thus furthering inconsistent and disproportionate punishment for sextortion.¹²² Arkansas does not explicitly exempt persons under eighteen years of age from its law, and it does not indicate whether juveniles should get a different sentence or whether the legislature intended for juveniles to be charged as adults.¹²³

California did not create a new law for sextortion but merely added to its extortion statute.¹²⁴ Therefore, a person who threatens to disperse naked pictures of the victim, unless the victim performs degrading acts or sends invasive bodily pictures, will face the same punishment as a person who threatens to disperse naked pictures of the victim in exchange for money.¹²⁵ Both extortion and sextortion require a communicated threat, but requiring someone to engage in sexual conduct or send sexual depictions of one's body inflicts a greater harm than the taking of money.¹²⁶ California punishes sextortionists who inflict sexual harm on their victims with a sentence between two and four years in prison, which downplays the seriousness of the crime.¹²⁷

Utah, unlike California, recognizes sextortion as a separate crime from extortion.¹²⁸ Utah, unlike California and Arkansas, lists aggravating

¹²² See Johnson, *Pleads Guilty*, *supra* note 48 (addressing how the teenager was sentenced to "counseling and probation under the state Special Sex Offender Disposition Alternative"). See also Lahut, *supra* note 49 (explaining that the teenager was sentenced to ten years of probation and to register as a sex offender).

¹²³ See *supra* Section II.D.1 (examining state sextortion statutes). See also ARK. CODE ANN. § 5-14-113. This could lead to varying punishments because of prosecutorial discretion. Compare Johnson, *Pleads Guilty*, *supra* note 48 (reporting that the teen faced counseling and rehabilitative services for sextortion), with Lahut, *supra* note 49 (stating that the teen received ten years of probation for sextortion).

¹²⁴ See *supra* CAL. PENAL CODE § 520 (criminalizing sextortion); Section II.D.1 (discussing California amending its extortion statute to include sextortion).

¹²⁵ See *supra* Section II.D.1 (highlighting California's amended sextortion statute to include extortion). There are other crimes a sextortionist could potentially face, but those crimes do not necessarily fit the committed act and could result in any number of years. See *supra* Part II.C (charging Mijangos with various crimes for his act).

¹²⁶ See *supra* Part II.B (communicating the sexual and demeaning acts committed by sextortionists). There is no indication that anyone charged under any of the three state statutes would have to register as a sex offender, or whether this crime is classified as a sexual offense. See ARK. CODE ANN. § 5-14-113 (recognizing that sextortion is a crime but not if it is a sexual offense or whether those convicted of it must register as a sex offender); CAL. PENAL CODE § 520 (describing the act of sextortion but not whether the crime is a sexual offense or requires sex offender registry); UTAH CODE ANN. § 76-5b-204(2) (detailing what constitutes an aggravated offense but not indicating whether it is considered a sexual offense or whether it requires registering as a sex offender).

¹²⁷ See *supra* Section II.D.1 (pointing out California's sentencing for sextortion). See also CAL. PENAL CODE § 520 (providing the term of years that can be sentenced for extortion and sextortion).

¹²⁸ See UTAH CODE ANN. § 76-5b-204(2) (separating sexual extortion into its own statute); *supra* Section II.D.1 (reflecting on the Utah sextortion statute).

factors for the act, which are mostly concerned with the type of sexual action sextorted and the effects of that action on the victim.¹²⁹ Utah then distinguishes between the severity of the sextortion that occurs and punishes sextortionists based on their acts and how their acts affected victims, giving credence to the sextortionist's crime.¹³⁰

Utah also has a higher sentence for sextortion as compared to California, with its lowest sentencing range between zero to five years for a level three felony and its highest sentencing range between five years and life.¹³¹ Utah even ensures that all victims are given a sense of justice for the wrong committed against them by recognizing that a separate offense is committed for each victim the sextortionist sexually extorts.¹³² However, Utah goes to the extreme by providing that, for each separate time the offender sexually extorts a victim, a separate offense is committed.¹³³ This could potentially lead to prosecutorial overcharging because, as it now reads, an offender could send an email threat and receive several pictures within in a matter of minutes.¹³⁴ Therefore, under Utah's law, a sextortionist could potentially face over one hundred years in prison within one day of sextortioning.¹³⁵ Utah's lack of clarity in limiting charging for sexual extortion could result in an effective life sentence without the offender ever committing aggravated sexual extortion.¹³⁶

¹²⁹ See UTAH CODE ANN. § 76-5b-204(4) (listing aggravating factors for sextortion); *supra* Section II.D.1 (listing the aggravating factors for the Utah sextortion statute).

¹³⁰ See UTAH CODE ANN. § 76-5b-204(3) (codifying sexual extortion as a third-degree felony, aggravated sexual extortion of an adult as a second-degree felony, and aggravated sexual extortion of a child or a vulnerable adult as a first-degree felony). See also *id.* § 76-3-203 (presenting the sentencing ranges for each felony). See Simon, *supra* note 88, at 1272 (providing that murder is separated in degrees to measure the offense by its character).

¹³¹ See UTAH CODE ANN. § 76-5b-204(3) (codifying sextortion as a crime); *id.* § 76-3-203 (recognizing varying punishments dependent on the type of sextortion committed); *supra* Section II.D.1 (discussing the prison sentences for each felony level).

¹³² See *supra* Section II.D.1 (reporting that Utah allows prosecutors to charge for each victim the offender sextorts).

¹³³ See *supra* Section II.D.1.

¹³⁴ See *supra* Part II.B.

¹³⁵ See § 76-5b-204(5) (stating that each act constitutes one charge of sextortion but not providing further guidelines for when one act of sextortion ends and a new act begins). See also *Blockburger v. United States*, 284 U.S. 299, 304 (1931) (holding where the same act constitutes a violation of two statutory provisions, the test for whether there is two or one offense depends on whether each statutory provision requires proof of another fact not required in the other statute). In *Blockburger*, the court allowed the accused to face charges under two statutory provisions for the same action because each statutory provision contained an element not found in the other. See *id.* (allowing the accused to be charged under two different statutes for the same act).

¹³⁶ See UTAH CODE ANN. § 76-5b-204(5) (opening the gate to allowing sextortionists to be charged for an uncapped number of years, depending on prosecutorial discretion). This

Arkansas, like Utah, created a separate statute for sextortion, but, unlike Utah, it does not provide any aggravators that would increase the punishment.¹³⁷ Arkansas's statute does not provide an answer as to whether, if children are sextorted, the sextortionist must be charged according to the statute, another statute, or both statutes.¹³⁸ Further, Arkansas's statute is ambiguous as to whether a person who commits sextortion can only be charged one time, despite the number of victims or offenses committed, or whether, like Utah, a person can be charged for each separate offense against each separate victim.¹³⁹ Like Utah and California, there is no explicit difference between an attempted offense and a completed offense, thus focusing on the act itself and not whether it was successful.¹⁴⁰ Arkansas's statute is silent as to whether repeat offenders are subject to aggravated sentencing, which could result in

statute might have constitutional problems because the separate charge and separate offense is open to interpretation and may result in cruel and unusual punishment by way of prosecutorial overcharging. *See id.* (creating an opportunity for an unlimited number of charges, depending on how the prosecutor defines a single act of sextortion). This provision in the statute might hold up, and at least Utah attempted to provide guidance whereas the other two states were silent concerning how many times someone could be charged for sextortion. *Compare* UTAH CODE ANN. § 76-5b-204(5) (considering it a separate offense for each victim and for each act or occurrence), *with* CAL. PENAL CODE § 518 (treating sextortion as extortion but not defining precisely how an offense will get charged), *and* ARK. CODE ANN. § 5-14-113 (clarifying what constitutes sextortion but not whether each act shall be charged as a separate offense).

¹³⁷ *Compare* ARK. CODE ANN. § 5-14-113 (indicating that there is only one way to commit sextortion), *with* UTAH CODE ANN. § 76-5b-204(5) (presenting a list of aggravators considered when committing sextortion). Arkansas, unlike the proposed federal statute, does not list any aggravators such as having child victims or the commission of the act results in physical or severe emotional injury to the victim. *Compare* ARK. CODE ANN. § 5-14-113 (leaving out whether there are aggravators for sextortion), *with* Online Safety Modernization Act of 2017, H.R. 3067, 115th Cong. § 2751 (2017) (listing aggravators such as having child victims or committing physically or emotionally injurious acts).

¹³⁸ *See* § 5-14-113. *See also supra* Part II.C (describing the alternative laws used to charge sextortionists). The sextortionist could face only five to twenty years, or more, depending on how the statute is interpreted. *See* § 5-14-113 (making it open to interpretation as to whether someone who sextorts a child can be charged under multiple statutes).

¹³⁹ This statute can be read as though each victim would constitute a charge and that each offense would only matter as to the sentencing range and thus not constitute a separate charge. *See* § 5-14-113 (defining what constitutes sextortion but not specifying how the charging will work). *See also* § 76-5b-204(5) (specifying how someone is to be charged for multiple acts of sextortion).

¹⁴⁰ In fact, there is no indication that it matters as to the egregiousness of the act committed, whether a child was involved, or whether the act was successful because, as indicated by the statute, all that matters is that the act was committed. *See* ARK. CODE ANN. § 5-14-113 (criminalizing the act of sexually extorting someone, irrespective of it actually producing results for the sextortionist).

repeat offenders getting out of prison only to offend again.¹⁴¹ Sextortion committed in Arkansas can result in being imprisoned between five and twenty years.¹⁴²

2. Federal Bill and Sextortion

The proposed federal statute covers all the ways in which an offender could sextort a victim but is silent on many issues.¹⁴³ First, the proposed federal statute is silent as to whether the prosecution can charge each separate act as a new offense and whether the offender would be charged for each victim.¹⁴⁴ Second, the federal statute is silent on whether juveniles can be charged for sextortion.¹⁴⁵ Finally, there is no mention of requiring those convicted of sextortion to register as sex offenders, which means registering is left to prosecutorial discretion.¹⁴⁶

The proposed federal statute has a section for offenses against minors, which like Utah, increases the sentencing for those who sexually extort children, and unlike Utah, the victim can be intended to be underage and not, in fact, be underage for a sextortionist to face a higher charge.¹⁴⁷

¹⁴¹ The Arkansas sextortion statute is vague enough that it is left open to prosecutorial and defense interpretation. *See id.* (allowing for someone to be charged for sextortion but not providing any added penalty for those who have previous sexual offenses).

¹⁴² *See id.* *See also id.* § 5-4-401(a)(3) (listing the sentencing ranges for felonies).

¹⁴³ *See* H.R. 3067, 115th Cong. § 2751 (2017) (covering ways in which someone could commit sextortion). *See also* UTAH CODE ANN. § 76-5b-204(2) (criminalizing the same methods of sextortion but having some listed as aggravators).

¹⁴⁴ The fact that the statute does not indicate any intent to treat each act as a separate offense makes sense because doing so would result in the potential problem Utah's statute has, prosecutorial overcharging. *See* H.R. 3067, § 2751 (outlawing sexual extortion but not explicitly stating that each act of sextortion is to be treated as a separate offense). It would go against logic to presume that an offender who sextorts one hundred people would only be charged for one offense, but Utah explicitly stated that a separate charge would occur for each victim sextorted. *See* § 76-5b-204(5)(a) (charging an offender with sextortion for each victim sextorted).

¹⁴⁵ Juveniles would then be charged the same as adults and sentenced longer if the act was committed against another juvenile. *See* H.R. 3067, § 2751 (recognizing no exemption for juveniles from this law).

¹⁴⁶ This is important because it would highlight whether Congress intends sextortion to be a sexual offense or if it would rather align sextortion with extortion. *See id.* (leaving out whether sextortion is an offense that requires one to register as a sex offender).

¹⁴⁷ *See supra* Section II.D.2 (explaining the proposed federal sextortion statute). This Note posits that Congress is addressing that the victim does not necessarily need to be a minor and that the offender only needs to think the victim is a minor to be charged with an offense involving minors because, while the act itself matters, whether the offender thought a child was victimized matters. Society should not have to wait for a sextortionist to target someone who is actually underage before the sextortionist can be charged, especially if the sextortionist "got lucky" and managed to sextort an adult whom they thought was younger. *See* H.R. 3067, § 2756 (recognizing intent as the main reason for charging someone for sextortion).

However, unlike Utah, the federal statute subdivides the section into offenses against minors who are between twelve and eighteen years old and offenses against minors under twelve years old, which is similar to making an offense against a minor a greater aggravator.¹⁴⁸

The proposed federal statute, like the Utah statute, recognizes the effect sextortion has on victims because it has a section increasing the punishment based on the potential injuries or death of the victim.¹⁴⁹ Compared to the states' sextortion statutes, the section increasing punishment based on serious bodily injury or death provides a steeper sentence, which is similar to Utah's aggravators for its sextortion statute.¹⁵⁰ Unlike the Utah statute, the proposed federal statute does not recognize severe emotional injury as an aggravator, which favors sextortionists.¹⁵¹

The proposed federal statute also has sections regarding attempted sextortion and repeat offenders.¹⁵² Regarding the attempt section, those

¹⁴⁸ See H.R. 3067, § 2756 (corresponding the victim's age with the level of punishment). See also UTAH CODE ANN. § 76-5b-204(4)(a) (increasing the felony level if the victim is a child or vulnerable adult).

¹⁴⁹ See H.R. 3067, § 2757 (increasing punishment for resulting injury or death). See also UTAH CODE ANN. § 76-5b-204(4) (enforcing a higher sentence for resulting injury or death). The proposed federal statute is silent as to whether a victim committing suicide would count as a death resulting from the sextortionist's acts, and while Utah does include serious bodily injury as an aggravator, it does not explicitly increase the punishment in the same way that the proposed federal statute does. See H.R. 3067, § 2757 (criminalizing sexual extortion). See also § 76-5b-204(4) (outlawing sexual extortion). Also, Utah does not include death as an aggravator in its statute, and the proposed federal statute does not include severe emotional injury in its statute. See H.R. 3067, § 2757 (explicitly including death as an aggravator for sexual extortion). See also § 76-5b-204(4) (including severe emotional injury as an aggravator for sexual extortion).

¹⁵⁰ See H.R. 3067, § 2757 (increasing the time served if death or serious bodily injury occurs). See also § 76-5b-204(4) (including injury as an aggravator for sextortion). No other state statute provides for an instance in which death occurs during an act of sextortion, yet allowing a judge to sentence an offense that cannot be committed in person without a limit raises some concern because it is illogical to ever foresee sentencing an offender to life in prison for a death the offender did not cause. See H.R. 3067, § 2757 (aggravating the offense of sextortion if death ensues).

¹⁵¹ See H.R. 3067, § 2757 (avoiding any explicit mention of severe emotional injury being an aggravator). See also § 76-5b-204(4) (recognizing severe emotional injury as an aggravator). Severe emotional injury would be difficult to prove because every victim would likely claim severe emotional injury, which is intangible, and sextortionists coerce victims to do something against their will by controlling some piece of private information about the victims' sexual activity. See *What Is Sextortion?*, *supra* note 14 (defining sextortion). Yet not recognizing the more severe instances of sextortion would allow those who coerce their victims into doing sexual conduct that is degrading and dehumanizing to have a punishment that does not fit the crime. See H.R. 3067, § 2757 (giving credence to more severe forms of sextortion). See also § 76-5b-204(4) (listing as aggravators, more severe forms of sextortion).

¹⁵² See H.R. 3067, § 2758 (criminalizing attempted sextortion). See also *id.* § 2759 (creating aggravating sentences for repeat offenders).

who attempt to sextort someone but fail in coercing the victim will be punished as if they had coerced the victim, which avoids rewarding the “lucky” sextortionists who were “unlucky” in coercing their victims.¹⁵³ Repeat offenders potentially face a harsher sentence because the maximum sentence for sextortion doubles for offenders with a prior sex offense, which differs from states that increase punishment for sextortionists with prior sex offenses.¹⁵⁴

Thus, the proposed federal statute and three state statutes differ in recognizing and punishing sextortion.¹⁵⁵ Some sextortion statutes, like California’s, have relatively low sentences for sextortion while other sextortion statutes, like Utah’s, have harsher sentences for sextortion.¹⁵⁶ Arkansas defines the act of sextortion in its statute but does not include aggravators and leaves out other details in its statute.¹⁵⁷ Therefore, a model sextortion statute is needed to achieve a reasonable punishment for sextortion and provide clearer guidelines for prosecutors and defense attorneys to follow.¹⁵⁸

IV. CONTRIBUTION

This Note proposes that states adopt a new model sextortion statute comprised of the language found in the California, Utah, Arkansas, and proposed federal sextortion statutes.¹⁵⁹ First, Part IV.A sets forth the

¹⁵³ See *id.* § 2758 (providing a separate section for attempted sextortion). Utah’s statute also treats attempts as though they were successful but does not have a separate section addressing attempted sextortion, unlike the proposed federal statute. See § 76-5b-204(5) (including attempted sextortion, but in the general part of the statute). By writing a separate section for attempt, the proposed federal statute can emphasize that the focus should be on the act, not so much the success of the act. See H.R. 3067, § 2758 (separating attempted sextortion and creating its own section).

¹⁵⁴ See H.R. 3067, § 2759 (doubling the maximum sentence of an offender with a prior sex offense). No other state statute doubles the maximum sentence of an offender with a prior sex offense, but Utah, instead, treats the prior sex offense as an aggravator. See § 76-5b-204(4).

¹⁵⁵ See *supra* Part II.D.

¹⁵⁶ See *supra* Section II.D.1. See also *supra* Section II.D.2 (remarking on the proposed federal sextortion statute). The proposed federal sextortion statute contrasts with California’s more relaxed sextortion statute in that it includes more severe punishment for the crime and even doubles the sentencing for repeat offenders. Compare CAL. PENAL CODE § 518 (treating sextortion like the crime of extortion), with H.R. 3067, § 2751 (including the various parts of the proposed federal bill for sextortion).

¹⁵⁷ See ARK. CODE ANN. § 5-14-113 (explicitly defining what constitutes sexual extortion but not indicating whether there are aggravators or whether it applies to juvenile sextortionists).

¹⁵⁸ See *infra* Part IV.A (formulating a model state sextortion statute that includes the best sections of each previously mentioned sextortion statute).

¹⁵⁹ See § 5-14-113 (outlawing sextortion whether it was successfully completed or not); CAL. PENAL CODE § 518 (criminalizing sextortion and exempting juveniles); UTAH CODE ANN.

model state sextortion statute for other states to adopt.¹⁶⁰ Part IV.A proposes a law that balances the criminality of the act committed with the charges allotted.¹⁶¹ Next, Part IV.B explains why adopting the model state sextortion statute is the best solution.¹⁶² Part IV.B affirms the need for a sextortion statute in general, the need for states to adopt sextortion statutes, and the need to include, not exempt, minors in sextortion statutes.¹⁶³

A. *Model State Sextortion Statute*

This model statute avoids ambiguity that could otherwise result in exuberant charges but recognizes the importance of accounting for technological methods not currently possible that may be used for sextortion. As highlighted in Part II.C, sextortion is a serious crime in which sextortionists commit different acts in pursuit of the same goal, and therefore, the egregiousness of the various acts must be weighable when it comes to punishment.¹⁶⁴

Therefore, with language taken from the California, Utah, Arkansas, and proposed federal sextortion statutes, the model state sextortion statute would read:

Sexual Extortion and Penalties.

- (a) *An individual commits the offense of sexual extortion if:*
- (1) *With an intent to coerce another person to engage in sexual contact, sexually explicit conduct, or to produce, provide, or distribute an image, video, or other recording of any individual naked or engaged in sexually explicit conduct, the individual communicates in person or by electronic means a threat to:*
 - (i) *injure the person, property, or reputation of any person; or*

§ 76-5b-204 (offering stringent punishments for offenders per victim, per offense); H.R. 3067, § 2751 (punishing those who commit sextortion using a computer). A model state sextortion statute would grant legitimacy for an otherwise illegitimate crime in the vast number of states without sextortion statutes.

¹⁶⁰ See *infra* Part IV.A.

¹⁶¹ See *infra* Part IV.A.

¹⁶² See *infra* Part IV.B.

¹⁶³ See *infra* Part IV.A.

¹⁶⁴ See *supra* Part II.C (describing the different acts used to illicit the sexually explicit material and acts).

- (ii) *produce or distribute an image, video, or other recording of the person engaged in sexually explicit conduct or depicted in a state of nudity.*
- (b) Sexual extortion of an adult is a third-degree felony offense unless:
- (1) aggravated sexual extortion of an adult as described in Section (c) occurs, which is a second-degree felony offense; or
 - (2) aggravated sexual extortion of an *adult over the age of eighteen deemed by the court to have a mental or physical impairment that substantially affects the adult's ability to be independent*, or aggravated sexual extortion of a minor as described in Section (c) occurs, which is a first-degree felony offense.
- (c) An individual commits aggravated sexual extortion when, in committing the offense described in Section (a)(1), any one of the following circumstances have been charged and admitted or found true in the action for the offense:
- (1) the victim is an *adult over the age of eighteen deemed by the court to have a mental or physical impairment that substantially affects the adult's ability to be independent*, or the victim is a minor;
 - (2) the offense was committed using an object deemed a dangerous weapon by the court or by violence, intimidation, menace, fraud, or threat of physical harm;
 - (3) the person caused bodily injury or severe psychological injury to the other person during or as a result of the offense;
 - (4) the person was a stranger to the victim or became a friend of the other person for the sole purpose of committing the offense;
 - (5) the person, before sentencing for the offense, was previously convicted of any sexual offense;
 - (6) the person occupied a position of special trust in relation to the other person;
 - (7) the person encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other individual, human trafficking, or human smuggling;

(8) the person caused penetration, however slight, of the genital or anal opening of the other person by any part or parts of the human body, or by any other object; or

(9) *the person forced by threat or coerced the other person to penetrate, however slight, the genital or anal opening of a third person by any parts of the human body, or by any other object.*

(d) An individual commits a separate offense under this section for each victim the individual subjects to the offense outlined in Section (a)(1).

(e) This section does not preclude a person from being charged and convicted of a separate criminal act if the person commits the separate criminal act while the person violates or attempts to violate this section.

(f) An attempt to violate Section (a)(1) shall be punishable in the same manner as a completed violation of that Section, but conduct that exclusively violates Section (a)(1) shall not constitute an attempted violation.

(g) *Persons under the age of eighteen years who commit the offense outlined in Section (a)(1) are not exempt from this section, but persons under the age of eighteen years, at the court's discretion, may be exempt from charges for aggravated sexual extortion in Section (b)(2) in light of the nature of the person's act and their capacity for rehabilitation.*¹⁶⁵

B. Commentary

The purpose of creating a sextortion statute is to grant legitimacy to a growing digital crime that is recognized in the media but not in the law.¹⁶⁶ Even though prosecutors have charged sextortionists for similar crimes, by creating a sextortion statute, states can properly charge sextortionists

¹⁶⁵ See ARK. CODE ANN. § 5-14-113 (outlawing sexual extortion); UTAH CODE ANN. § 76-5b-204 (criminalizing sexual extortion); H.R. 3067, § 2751 (proposing a criminal statute for sexual extortion). The unitalicized portions of this model state statute come from the Utah sextortion statute. The italicized portion of Section (f) comes from the proposed federal sextortion statute. The italicized portions of Section (a)(1) and Section (a)(1)(ii) come from the Arkansas sextortion statute. The italicized portion in Section (b)(2), Section (c)(1), Section (c)(9), and Section (g) come from the author. The author reworded Section (c)(2) and left out kidnapping. The model state statute avoids the gaps left behind in the state statutes and the federal statute.

¹⁶⁶ See *supra* Part II.C (discussing sextortionists recognized by the media and charged with alternative crimes). See also *supra* Part III.A (explaining that sextortionists are inconsistently charged throughout the nation).

for their acts by charging sextortionists for the entirety of the crime, as opposed to only parts of the crime.¹⁶⁷ A sextortion statute increases judicial efficiency for an otherwise complicated crime that typically involves multiple victims spread out over vast distances.¹⁶⁸

Opponents will argue that the proposed federal statute can solve the sextortion problem. However, the proposed federal statute fails to address several concerns. For example, it does not account for juvenile offenders, nor does it create any aggravators for those who have adult victims, except in the case of severe injury or death.¹⁶⁹ Even with the proposed federal statute passed, under the model state sextortion statute, states would still be allowed to charge sextortionists with state sextortion crimes, thus guaranteeing justice for society in case the federal government fails in court.

It still might appear that having a state statute is not important. However, every state needs to have a sextortion statute, as opposed to relying on the possibility that the proposed federal sextortion statute will pass, because a state can modify its sextortion statute quickly should the crime evolve with technology currently unfathomable. In addition, a state can then prosecute sextortionists and save federal judicial resources for use in international sextortion crimes. The model state sextortion statute allows a state to set sentencing guidelines for the crime committed and provide a communal and local, as opposed to a federal and national, sense

¹⁶⁷ See *supra* Part II.C (presenting sextortionists who all have vastly different charges and sentences). Laws pertaining to child pornography are drastically different because, even though sextortionists could potentially get charged with laws protecting the sexual innocence of children, those laws do not include any protection for adult victims, and thus, those charges might not get pursued in the presence of child protection laws. See 18 U.S.C. § 2251 (2012) (criminalizing the sexual exploitation of minors); 18 U.S.C. § 2252 (2012) (prohibiting activities relating to material constituting the sexual exploitation of minors); 18 U.S.C. § 2252A (2012) (outlawing child pornography). Revenge pornography laws are also different because sextortionists ultimately threaten to send the explicit material to elicit some sexual conduct from their victim, whereas revenge pornography violators intend to disseminate the explicit material at the outset. See H.R. 4472, 115th Cong. § 1802 (2017) (proposing a federal law to make revenge porn illegal). Laws against extortion do not provide justice because those laws do not recognize the sexually assaultive nature of sextortion and that victims of sextortion are often forced to commit intrusive and dehumanizing acts. See 18 U.S.C. § 875 (2012) (proscribing a punishment for those who commit extortion). See also *supra* Part II.B (explaining some of the dehumanizing acts sextortionists forced victims to commit).

¹⁶⁸ See *supra* Part II.C (prosecuting sextortionists for varying crimes other than sextortion). Sextortion would constitute one charge, as opposed to charging a sextortionist with varying laws that the sextortionist's acts might violate.

¹⁶⁹ See H.R. 3067, § 2757 (increasing the sentence for sextortion against an adult or minor if death or serious bodily injury occurs but not including any other aggravators dependent on the severity of the act).

of justice.¹⁷⁰ It also recognizes the egregiousness of the offense and avoids undercharging, like the California statute;¹⁷¹ it avoids overextending the justice it is created to serve and turning to what appears to be revenge, like the Utah statute;¹⁷² it avoids vagueness in considering the varying degrees of sextortion, like the Arkansas statute;¹⁷³ and unlike the proposed federal statute,¹⁷⁴ a juvenile offender faces aggravated sextortion charges for sextorting another juvenile based upon judicial discretion.

Even though there are arguments that juveniles do not comprehend the consequences of their actions, juveniles need to be included in the sextortion statute because this is a severe crime, which has the same outcome, and regardless of the offender's age or understanding, the intent is the same.¹⁷⁵ At a young age, juveniles are exposed to technology and

¹⁷⁰ See Government's Objections Mijangos, *supra* note 51, at 1 (alleging that Mijangos had victims who were minors); Finkbiner Sentencing, *supra* note 59, at 1 (charging Finkbiner with extortion). Finkbiner and Mijangos both sextorted children, and Finkbiner was charged for his crime against children, whereas Mijangos was only charged for extortion. See Government's Objections Mijangos, *supra* note 51, at 1 (forgoing any charges for child crimes against Mijangos); Finkbiner Sentencing, *supra* note 59, at 1 (recommending that Finkbiner be charged for his crimes against children). Finkbiner was sentenced to over one hundred years and Mijangos was sentenced to less than five years. See Government's Objections Mijangos, *supra* note 51, at 1; Finkbiner Sentencing, *supra* note 59, at 1. If the federal sextortion bill becomes law, a state is not guaranteed to have what it would consider a just outcome for its citizen(s) because some states may want different penalties for sextortionists that will not survive a federal congressional vote. However, the model state sextortion statute guarantees the state some discretion to charge, aggravate each charge, and choose whether or not to exempt a juvenile offender from the child sextortion aggravator. See *supra* Part IV.A (proposing a model state sextortion statute that avoids the alleged issues found in other sextortion statutes).

¹⁷¹ Compare *supra* Part IV.A (providing a felony charge for sexual extortion and treating it as a sexual offense), with CAL. PENAL CODE § 518 (including sexual extortion in extortion statute).

¹⁷² Compare *supra* Part IV.A (allowing sextortion of each victim to constitute a separate charge), with UTAH CODE ANN. § 76-5b-204 (constituting a separate charge for each sextortion victim and for each occurrence of sextortion).

¹⁷³ Compare *supra* Part IV.A (outlining sextortion aggravators), with ARK. CODE ANN. § 5-14-113 (defining the act of sextortion and not including any sextortion aggravators).

¹⁷⁴ Compare *supra* Part IV.A (specifying that juvenile offenders, based on judicial discretion, may be exempt from charges for aggravated sextortion of a minor based on the nature of the juvenile offender's act and the offender's capacity for rehabilitation), with H.R. 3067, § 2756 (increasing the sentence for offenses against minors, but not explicit as to whether juveniles would face the increased sentencing as well).

¹⁷⁵ See *supra* Section II.B.1 (discussing the conduct of an adult and a teenager sextortionist, both of which resulted in victims sending inappropriate recordings of themselves and the sextortionists threatening to disseminate the explicit material to elicit more material from the victims). The acts committed by Chansler and the Chehalis teenager are indistinguishable from the victim's point of view: the victims were coerced into taking invasive and sexually explicit photographs and recordings of themselves for an anonymous person. See *Special Agent*, *supra* note 42 (describing Chansler's sextortionate acts). See also Johnson, *Pleads Guilty*, *supra* note 48 (reporting on the teenager sextortionist's acts). Deciding whether to completely

the remoteness of the internet only serves to shield juvenile sextortionists from understanding the pain they cause in each victim's life; however, subjecting another person to the offender's will by use of threat should still be punished.¹⁷⁶ Finally, similar to adult sextortionists, juvenile sextortionists should potentially face the minimum sentencing for their crimes, based on a case-by-case analysis.¹⁷⁷

V. CONCLUSION

While some may object, a model state statute is necessary to legitimize the crime of sextortion and provide justice for the victims of sextortion. The model state sextortion statute also avoids possible unconstitutional overcharging. It ensures judicial efficiency by giving prosecutors a specific crime to charge sextortionists with as opposed to forcing prosecutors to creatively charge sextortionists under other laws. Should future technology change beyond current comprehension, states can modify the model sextortion statute faster than the federal government can modify its statutes thus stopping any unrecognized crime from going improperly unpunished.

The model state sextortion statute avoids the looming issues of current state statutes in California, Utah, and Arkansas, as well as the proposed federal sextortion statute. The model state sextortion statute will stand on its own and not remain housed under a different crime because of its sexually assaultive and extortionate nature. It recognizes that juvenile and adult sextortionists will affect their victims in the same manner but also allows for juveniles, by the court's discretion, to avoid aggravated charges for sextorting other juveniles.

In the case of Drew mentioned in the introduction of this Note, he would get charged separately for his attempted sextortion of Ashley, he would likely face aggravated sextortion charges, and he would face a

exempt juveniles from being charged for extortion would go beyond the scope of this Note and would require updated studies of the adolescent brain and behavior while using the new technology. Thus, this Note proposes a middle ground that does not expressly exempt juveniles from being charged with sextortion but at least allows a judge discretion to decide whether the juvenile offender should face aggravated sextortion charges for sextorting a child on a case-by-case basis.

¹⁷⁶ See *supra* Section II.B.1 (describing the way in which one teenager sextorted his victims, sometimes following through with his threats). The Chehalis teenager might not have witnessed firsthand what his victims were experiencing, but he was asked to stop his sextortion acts and to no avail. See Johnson, *Hundreds of Illicit Photos*, *supra* note 46 (reporting that teen was asked by victim and parent to stop, but he continued sexually extorting his victim).

¹⁷⁷ See *supra* Part IV.A (charging each person who commits sextortion with a third-degree felony, unless circumstances warrant a higher felony).

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second-degree felony offense. Drew is a sextortionist, and it is time for every state to recognize his offense and charge him accordingly.

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