



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

MEMORANDUM

DATE: February 20, 2019

TO: Honorable Jennifer Williamson, Chair

FROM: Aaron Knott, Legislative Director
Oregon Department of Justice

SUBJECT: HB 2393 – Unlawful Dissemination of an Intimate Image Update

In 2015, the Oregon Legislature passed SB 188, which created the crime of Unlawful Dissemination of an Intimate Image. This bill attempted to combat what is colloquially referred to as “revenge porn,” the distribution of an intimate image of another person without their consent. In the four years since the passage of the bill, the Department of Justice and other stakeholders have actively monitored the progression of cases charged under this statutory provision to assess the efficacy of the bill. After reviewing feedback, the Department of Justice convened an interim workgroup to refine this statutory provision, including members from law enforcement, criminal defense, the ACLU, district attorneys and academia. This work group achieved general consensus on several recommendations, which are now encapsulated in HB 2393.

Recommendation one: **Eliminate statutory redundancy.** Both the crime of harassment and the crime of unlawful dissemination of an intimate image broadly prohibit the dissemination of an image of a person in a state of nudity, albeit under somewhat different standards. Both crimes are similarly punishable as a Class A misdemeanor. These offenses should be consolidated into one section.

Recommendation two: **Eliminate the requirement that the crime require dissemination via an “internet website.”** Even as recently as 2015, most dissemination was done via the internet. Subsequently, distribution has largely migrated to phone driven apps which do not squarely fit within the definition of “internet website.” This statutory focus on a specific distribution method has proven a poor fit with rapidly changing technologies which increasingly allow for non-website driven methods of information sharing.

Recommendation three: **Allow for a civil action to pursue damages stemming from the unlawful dissemination of an intimate image.** In 2018, the Uniform Law Commission promulgated recommendations for a uniform statute prohibiting the unlawful dissemination of intimate images. Among these recommendations was the endorsement of the inclusion of a civil right of action for the victims of this offense. While a plurality of states include a civil remedy in

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their anti-revenge porn laws, Oregon is not among them. Most significant crimes have some relative equivalent in tort law providing for a private action. This proposal would add a civil remedy to Oregon statute.

Recommendation four: **Clarify the “identifiability” of the victim.** Existing law requires that a prosecutor demonstrate that any intimate image be “identifiable.” In attempting to apply this provision, prosecutors have observed that this term is difficult to apply because it fails to specify the standard under which an image is considered identifiable or the nature of the actor making the identification. The workgroup reached consensus to define the term “identifiable” as meaning that “a reasonable person would be able to recognize the individual depicted in the image as the other person.”

These four recommendations reflect the multidisciplinary expertise of four years of experience in applying this relatively new and rapidly evolving area of criminal law. HB 2393 keeps our unlawful dissemination provision accurate, clear and fair.

DOJ CONTACT

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