



Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 20, 2019

The Honorable Representative Jennifer Williamson, Chair
House Judiciary Committee, Members

Re: Testimony regarding HB 2393

Dear Chair Williamson and Members of the Committee:

Thank you for the opportunity to submit the following comments regarding HB 2393.

We want to extend our thanks to the Attorney General for including Oregon Criminal Defense Lawyers Association in the interim workgroup reviewing the implementation of 2015's SB 188 that created the crime of Unlawful Dissemination of an Intimate Image.

We appreciated the opportunity to provide feedback, and we are of the opinion that the agreed upon changes made in the workgroup are reasonable. We do not object to consolidating this crime to one statute, removing the "internet website" requirement due to ever-changing technology, and defining the currently undefined "identifiable image" to mean "a reasonable person would be able to recognize the individual depicted in the image as the other person."

Our only concern is with the civil cause of action provision in Section 2 that creates a statutory floor of recoverable damages in the amount of \$5,000 in a civil case. Our discomfort stems from the potential conflation of what needs to be proven in criminal court before restitution can be imposed and the instruction to a civil court that the baseline for recovery is \$5,000.

It is our understanding from conversations with stakeholders including the DOJ that the intent of this statute is *not* to give direction to a criminal court on how to value restitution, and the creation of a civil remedy with a statutory floor for recovery *does not* inform the criminal restitution process, and it *does not change* the current caselaw surrounding criminal restitution, compensatory fines, and economic damages. However, in an effort to be very careful about legislative intent, we would suggest the following amendment be added to Section 2 on page 2:

(6) The provision for recovery of statutory damages in subparagraph (2)(a)(B) of this section is not evidence of the existence or amount of economic damages, for purposes of restitution under ORS 137.106.

Thank you for your consideration.

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About OCDLA

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

For questions or comments contact:

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