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M E M O R A N D U M

TO: Honorable Rep. Kropf, Chair

FROM: Aaron Knott, MCDA Policy Director

SUBJECT: Testimony in support of HB 4146 -1

DATE: 2/8/24

While we support the bill in its entirety, this testimony will address only the changes to the unlawful dissemination of an intimate image statute.

In 2015, I served on the Task Force that ultimately created the crime of unlawful dissemination of an intimate image, Oregon's statutory response to the odious practice more commonly known as "revenge porn." In these cases, photos or videos containing a person in a state of nudity or engaged in a sexual act are distributed without the permission of the person depicted, with the intent to humiliate or harass them. These disclosures take many forms, including the sending of E-Mailed attachments to family members or employers, by text to classmates or coworkers, or via upload to internet websites dedicated to revenge porn, which will often host the photos alongside personal identifying information of the person recorded or photographed.

At that time we made the decision to include a requirement that the person in the photo be "identifiable" in the image itself. The thinking was that the harm of revenge porn was the fact that once uploaded, it could be infinitely reproduced without consequence. It followed from this that the photo would need to be reasonably identifiable as a particular person in order for the harm to be fully realized.

I appear before you today, nine years later, to tell you that this decision was a mistake.

When this statute was initially created, we did not yet fully understand that the harm of the unlawful dissemination of an intimate image is far broader - revealing pictures are often used as means of coercion, retaliation and control, and even if a reasonable person might not be able to identify who they were seeing from the four corners of the photo

alone, the recipients would readily be able to make that connection because of who sent the photo, to whom, and why.

The existing requirement that a photo be “identifiable” creates the deeply traumatizing need to litigate whether a particular torso can be identified without the usual methods of collateral proof that prosecutors use in other cases. Instead of being able to prove that the photo is of the victim and sent by the defendant using collateral evidence, such as establishing that they were in a relationship at the time the photo was taken, that she originally took the picture and can prove she sent it to the defendant, and he then sent the photos to others from his own phone and identified the photos as of the victim in the accompanying text message, prosecutors are left to try to convince a jury that the victim can be reasonably identified by the unique features of her body or surroundings alone. This is prone to error, ignores reliable evidence, and is deeply traumatizing.

Simply removing the term “identifiable” resolves this issue. The requirement that we prove the identity of the person depicted in the intimate image remains and must still be proven beyond a reasonable doubt. The sole change is the prosecutor’s ability to introduce collateral evidence of identity beyond what is contained in the photo itself.

This is a simple change, but will make an enormous difference in the lives of crime victims who see intimate images of themselves distributed without their consent but who may nevertheless be denied justice - or forced into a deeply traumatizing process of litigation over whether their body is “reasonably identifiable.”

We urge the passage of HB 4146.

Contact: Aaron Knott, Policy Director