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TO: Chair Kropf, Vice-Chairs Andersen and Wallan,
and Members of the House Committee on Judiciary

FROM: Kimberly McCullough, Legislative Director
Oregon Department of Justice

SUBJECT: Support for HB 4146 – Victim's Rights Package

This testimony is presented in support of HB 4146, which closes a loophole in Oregon's "revenge porn" statute and expands venue options for filing restraining orders.

Closing the Unlawful Dissemination of an Intimate Image ("Revenge Porn") Loophole

In 2015, in response to an explosion of so called "revenge porn," Attorney General Ellen Rosenblum introduced successful legislation (SB 188) creating a new crime of unlawful dissemination of an intimate image. Images subject to this law are intimate images generally depicting sexual acts or explicit nudity, commonly taken consensually within a romantic relationship and then uploaded without the consent of the person depicted upon the conclusion of that relationship. These images are also appropriated within abusive relationships to coerce, punish or blackmail, or to deter the reporting of additional abuse.

These images are often uploaded to Internet websites alongside an individual's personal identifying information, including their name, address, workplace, email and social media handles or addresses. This has the dual effect of exposing the victim to anonymous criticism, humiliation, and harassment via all forms of digital communication, as well as guaranteeing that an Internet search of that person made by any employer, landlord, family member or friend would likely reveal the explicit images. Because these images are functionally permanent once uploaded to the Internet and tagged in this way, the reputational damage caused by the dissemination of these intimate images is profound and potentially lifelong.

In 2019, after four years of actively monitoring the progression of cases charged under this statutory provision to assess the efficacy of the bill, the Department of Justice convened an interim workgroup to refine this statutory provision, and the Attorney General introduced successful

legislation (HB 2393) that improved the law in several ways. One of these changes attempted to address a difficult issue that prosecutors observed in various cases related to the requirement that an intimate image be "identifiable," because it failed to specify the standard under which an image is considered identifiable.

Additional years of experience have revealed that the law, and particularly the requirement that an image be "identifiable," need further refinement. More specially, the requirement that images be "identifiable" has led to instances where courts could not convict perpetrators because the victims were not identifiable in the photos, even when perpetrators admitted that the shared photos were of the victim. HB 4146 closes this loophole by removing the word "identifiable" from the statute.

Restraining Order Venue Expansion

Domestic and sexual violence survivors can currently file for restraining orders in the counties where they themselves or their abusers live. This package expands these options to also allow survivors to file for a civil protective order where the abuse occurred. This is an important change for the safety of domestic and sexual violence survivors, allowing them the same venue options for filing that are already available to victims of stalking under Oregon laws.

Victims filing for restraining orders should have options available that help them seek and maintain safety. Studies show that the most dangerous time for a domestic violence victim is when they leave their abuser. Often, they must physically relocate to a location unknown to their abuser and will enroll in the Department of Justice's Address Confidentiality Program. Limiting options for where these victims can file for the restraining order can run the risk of revealing information about their new location to their abuser. Limiting options for filing may also require a victim to go to a courthouse near the offender, the offender's work, or people known to offender, thereby endangering the victim's safety.

Allowing filing to occur in the county of abuse is also important to ensure that victims have access to justice. For example, it will enable law enforcement witnesses and individuals who witnessed abuse to testify at contested hearings more easily, which can make a difference in whether a restraining order is upheld or not.

Finally, allowing filing in the county of abuse will allow for a more trauma-informed process for many victims. This is because a victim may already be working with a DAVAP or local DV/SA advocate as they navigate the SAFE kit/SANE examination process, criminal justice process, and/or counseling and support options. These individuals should have the option of filing in the same county where they are already obtaining support, so the same advocates can assist them

through the restraining order proceedings. This is trauma-informed both because it gives victims agency and because it avoids the secondary victimization that comes from victims having to go through the painful process of telling their story to a new person and building a new advocate relationship.

Invasion of Privacy

We understand the invasion of privacy provisions will not be included in the bill, and we look forward to working with Representative Hartman and public safety stakeholders in the interim on that topic.