

B-Engrossed House Bill 2477

Ordered by the House June 29
Including House Amendments dated April 29 and June 29

Sponsored by Representative HUFFMAN; Representatives BARKER, BARTON, BENTZ, BERGER, CAMERON, COWAN, FREEMAN, GARRETT, GILLIAM, HANNA, KRIEGER, MATTHEWS, OLSON, G SMITH, SPRENGER, STEGLER, THOMPSON, VANORMAN, WHISNANT, WINGARD (at the request of Judge Laura Pryor (retired) and Jean Beckley)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies crime of, **and cause of action for**, invasion of personal privacy. [*Increases penalty for specified convicted persons to maximum of five years' imprisonment, \$125,000 fine, or both. Requires specified convicted persons to report as sex offender.*]

A BILL FOR AN ACT

1
2 Relating to invasion of personal privacy; creating new provisions; and amending ORS 30.865, 163.700
3 and 163.702.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 163.700 is amended to read:

6 163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of per-
7 sonal privacy if:

8 (a)(A) The person knowingly makes or records a photograph, motion picture, videotape or other
9 visual recording of another person in a state of nudity without the consent of the person being re-
10 corded; and

11 (B) At the time the visual recording is made or recorded the person being recorded is in a place
12 and circumstances where the person has a reasonable expectation of personal privacy; or

13 (b)(A) For the purpose of arousing or gratifying the sexual desire of the person, the person is
14 in a location to observe another person in a state of nudity without the consent of the other person;
15 and

16 (B) The other person is in a place and circumstances where the person has a reasonable ex-
17 pectation of personal privacy.

18 (2) As used in this section:

19 (a) "Makes or records a photograph, motion picture, videotape or other visual recording" in-
20 cludes, but is not limited to, making or recording or employing, authorizing, permitting, compelling
21 or inducing another person to make or record a photograph, motion picture, videotape or other
22 visual recording.

23 (b) "Nudity" means **any part of the** uncovered, or less than opaquely covered, [*post-pubescent*
24 *human*];

25 (A) Genitals[.];

26 (B) Pubic [*areas*] **area**; or

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (C) [a *post-pubescent human*] Female breast below a point immediately above the top of the
2 areola. [*“Nudity” includes a partial state of nudity.*]

3 (c) “Places and circumstances where the person has a reasonable expectation of personal pri-
4 vacy” includes, but is not limited to, a bathroom, dressing room, locker room that includes an en-
5 closed area for dressing or showering, tanning booth and any area where a person undresses in an
6 enclosed space that is not open to public view.

7 (d) “Public view” means that an area can be readily seen and that a person within the area can
8 be distinguished by normal unaided vision when viewed from a public place as defined in ORS
9 161.015.

10 (3) Invasion of personal privacy is a Class A misdemeanor.

11 **SECTION 2.** ORS 163.702 is amended to read:

12 163.702. (1) The provisions of ORS 163.700 do not apply to:

13 [(1)] (a) Any legitimate medical procedure performed by or under the direction of a person li-
14 censed to provide medical service for the purpose of medical diagnosis, treatment, education or re-
15 search, including, but not limited to, the recording of medical procedures; and

16 [(2)] (b) Any activity undertaken in the course of bona fide law enforcement or corrections ac-
17 tivity or necessary to the proper functioning of the criminal justice system, including but not limited
18 to the operation and management of jails, prisons and other youth and adult corrections facilities.

19 **(2) The provisions of ORS 163.700 (1)(a) do not apply to a visual recording of a person**
20 **under 12 years of age if:**

21 **(a) The person who makes or records the visual recording is the father, mother, sibling,**
22 **grandparent, aunt, uncle or first cousin, by blood, adoption or marriage, of the person under**
23 **12 years of age; and**

24 **(b) The visual recording is made or recorded for a purpose other than arousing or grati-**
25 **fyng the sexual desire of the person or another person.**

26 **SECTION 3.** ORS 30.865 is amended to read:

27 30.865. (1) A plaintiff has a cause of action for invasion of personal privacy if the plaintiff es-
28 tablishes any of the following:

29 (a) The defendant knowingly made or recorded a photograph, motion picture, videotape or other
30 visual recording of the plaintiff in a state of nudity without the consent of the plaintiff, and at the
31 time the visual recording was made or recorded the plaintiff was in a place and circumstances where
32 the plaintiff had a reasonable expectation of personal privacy.

33 (b) For the purpose of arousing or gratifying the sexual desire of the defendant, the defendant
34 was in a location to observe the plaintiff in a state of nudity without the consent of the plaintiff,
35 and the plaintiff was in a place and circumstances where the plaintiff had a reasonable expectation
36 of personal privacy.

37 (c) For the purpose of arousing or gratifying the sexual desire of any person, the defendant
38 knowingly:

39 (A) Made or recorded a photograph, motion picture, videotape or other visual recording of an
40 intimate area of the plaintiff without the consent of the plaintiff; or

41 (B) Viewed an intimate area of the plaintiff without the consent of the plaintiff.

42 (d) Without the consent of the plaintiff, the defendant disseminated a photograph, motion pic-
43 ture, videotape or other visual recording of the plaintiff in a state of nudity, and the defendant knew
44 that at the time the visual recording was made or recorded the plaintiff was in a place and cir-
45 cumstances where the plaintiff had a reasonable expectation of personal privacy.

1 (2) A plaintiff who prevails in a cause of action for invasion of personal privacy under this
2 section is entitled to receive:

3 (a) Compensatory damages; and

4 (b) Reasonable attorney fees.

5 (3) An action under this section must be commenced not later than two years after the conduct
6 that gives rise to a claim for relief occurred.

7 (4) The remedy provided by this section is in addition to, and not in lieu of, any other claim for
8 relief that may be available to a plaintiff by reason of conduct of a defendant described in subsection
9 (1) of this section.

10 **(5) The provisions of subsection (1)(a) and (d) of this section do not apply to a photo-**
11 **graph, motion picture, videotape or other visual recording of a person under 12 years of age**
12 **if:**

13 **(a) The person who makes, records or disseminates the visual recording is the father,**
14 **mother, sibling, grandparent, aunt, uncle or first cousin, by blood, adoption or marriage, of**
15 **the person under 12 years of age; and**

16 **(b) The visual recording is made, recorded or disseminated for a purpose other than**
17 **arousing or gratifying the sexual desire of the person or another person.**

18 [(5)] (6) As used in this section:

19 (a) "Intimate area" means:

20 (A) Undergarments that are being worn by a person, are covered by clothing and are intended
21 to be protected from being seen; and

22 (B) Any of the following that are covered by clothing and are intended to be protected from
23 being seen:

24 (i) Genitals;

25 (ii) Pubic areas; or

26 (iii) Female breasts below the point immediately above the top of the areola.

27 (b) "Made or recorded a photograph, motion picture, videotape or other visual recording" in-
28 cludes, but is not limited to, making or recording or employing, authorizing, permitting, compelling
29 or inducing another person to make or record a photograph, motion picture, videotape or other
30 visual recording.

31 (c) "Nudity" means **any part of the** uncovered, or less than opaquely covered, [*post-pubescent*
32 *human*]:

33 **(A) Genitals[.];**

34 **(B) Pubic [areas] area; or**

35 **(C) [a post-pubescent human] Female breast below a point immediately above the top of the**
36 **areola. ["Nudity" includes a partial state of nudity.]**

37 (d) "Places and circumstances where the plaintiff has a reasonable expectation of personal pri-
38 vacy" includes, but is not limited to, a bathroom, dressing room, locker room that includes an en-
39 closed area for dressing or showering, tanning booth and any area where a person undresses in an
40 enclosed space that is not open to public view.

41 (e) "Public view" means that an area can be readily seen and that a person within the area can
42 be distinguished by normal unaided vision when viewed from a public place as defined in ORS
43 161.015.

44 **SECTION 4. The amendments to ORS 30.865, 163.700 and 163.702 by sections 1 to 3 of this**
45 **2009 Act apply to conduct occurring on or after the effective date of this 2009 Act.**

