

Enrolled
House Bill 2477

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

CHAPTER

AN ACT

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

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

SECTION 1. ORS 163.700 is amended to read:

163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of personal privacy if:

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

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

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

(B) The other person is in a place and circumstances where the person has a reasonable expectation of personal privacy.

(2) As used in this section:

(a) "Makes or records a photograph, motion picture, videotape or other visual recording" includes, but is not limited to, making or recording or employing, authorizing, permitting, compelling or inducing another person to make or record a photograph, motion picture, videotape or other visual recording.

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

(A) Genitals[.];

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

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

(c) "Places and circumstances where the person has a reasonable expectation of personal privacy" includes, but is not limited to, a bathroom, dressing room, locker room that includes an enclosed area for dressing or showering, tanning booth and any area where a person undresses in an enclosed space that is not open to public view.

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

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

SECTION 2. ORS 163.702 is amended to read:

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

[(1)] (a) Any legitimate medical procedure performed by or under the direction of a person licensed to provide medical service for the purpose of medical diagnosis, treatment, education or research, including, but not limited to, the recording of medical procedures; and

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

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

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

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

SECTION 3. ORS 30.865 is amended to read:

30.865. (1) A plaintiff has a cause of action for invasion of personal privacy if the plaintiff establishes any of the following:

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

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

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

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

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

(d) Without the consent of the plaintiff, the defendant disseminated a photograph, motion picture, videotape or other visual recording of the plaintiff in a state of nudity, and the defendant knew that at the time the visual recording was made or recorded the plaintiff was in a place and circumstances where the plaintiff had a reasonable expectation of personal privacy.

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

(a) Compensatory damages; and

(b) Reasonable attorney fees.

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

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

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

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

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

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

(a) "Intimate area" means:

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

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

(i) Genitals;

(ii) Pubic areas; or

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

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

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

(A) Genitals[.];

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

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

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

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

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

Passed by House June 29, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 29, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State