



Date: May 11, 2015

To: Senate Judiciary Committee, Chair Prozanski and Members

From: Laurie Wimmer, OEA Government Relations

RE: *HB 2596A [Upskirting prohibition]*

On behalf of OEA's 42,000 members in Oregon's public schools and community colleges, it is my honor to testify in support of HB 2596A, which we requested to close a gap in our laws pertaining to invasions of personal privacy.

What you'll hear from one of our great teachers here today is that a phenomenon exists, called "upskirting", involving the surreptitious recording of images of people's intimate areas using flip phones, and then circulating and sharing the stolen images on social media. This humiliating and invasive behavior is a "thing" out there – some have competitions to see who is able to capture the most such photos or videos and post them on the internet.

Such behavior is devastating, but, as you will see in the newspaper article attached to my testimony, is not illegal conduct in Oregon if the unsuspecting victim is wearing underwear – because the images taken are not specifically "nude" photos. This parsing defies logic. The injustice of having no remedy for this creepy invasion of privacy is something you can remedy. And that's why we asked for legislation to make both the act of capturing the image and of circulating it a crime. Because the Senate had already passed a bill related to circulating lewd images, that portion of the bill was amended out of HB 2596 on the House side. We believe that the two bills are companions in the effort to make certain that this phenomenon is curbed.

It's important to note that it's not just our members who have been victimized by upskirting and similar behaviors. Our students are also at risk. The bill has been crafted to protect anyone, anywhere, from such intentional conduct. Now, to tell you about her experience, is Albany teacher Dana Lovejoy, whose courage in coming forward is truly inspiring. Thank you for considering our request for passage of this bill.

Taking photos up girl's skirt at Beaverton Target: Appalling, but not a crime, judge rules

Washington County Courthouse.jpg

Washington County Circuit Court is located in downtown Hillsboro. *(File photo)*

Emily E. Smith | The Oregonian/OregonLive By **Emily E. Smith | The Oregonian/OregonLive**
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on February 05, 2015 at 7:17 PM

No crime occurred when a man crouched down in a Target aisle and snapped photos up a 13-year-old girl's skirt, a **Washington County** judge ruled Thursday.

The behavior was "lewd" and "appalling," the judge said, but it did not violate any statute on the books in Oregon.

"From a legal point of view, which unfortunately today is my job to enforce, he didn't do anything wrong," Judge Eric Butterfield said.

He acquitted Patrick Buono, 61, of Portland on two counts of **invasion of privacy** and two counts of attempted **second-degree encouraging child sex abuse** -- a charge that relates to child pornography.

The case involved a voyeuristic phenomenon known as "upskirting," which state law does not expressly prohibit.

Buono **approached the girl** Jan. 3, 2014, in a Beaverton Target. She didn't notice him stick his cellphone under her skirt, but someone else did.

The eyewitness reported the incident, and store surveillance video confirmed it. Buono's ex-girlfriend testified that he broke down and told her what he had done, fearful that he would be caught.

Buono's defense: Yes, he did it. But what he did defied no law.

Defense attorney Mark Lawrence argued that Buono had taken the images in public, a place where no one can reasonably expect privacy.

The law bans clandestine photography in bathrooms, locker rooms, dressing rooms and tanning booths -- all places where people should expect privacy. But the aisle in Target was plainly public, Lawrence said.

Plus, up-skirt sightings can occur by happenstance, he said, citing the famous photos of a wind-swept **Marilyn Monroe**. It could happen to anyone riding an upward-bound escalator, taking a spill, exiting a car.

"These things are not only seen but video-recorded," Lawrence said. "It's incumbent on us as citizens to cover up whatever we don't want filmed in public places."

On top of that, Lawrence noted, the girl was wearing underwear, and therefore was not nude, which the invasion of privacy statute requires.

Deputy District Attorney Paul Maloney argued the point: "Sure, she's in a public place. But she had an expectation of privacy that a deviant isn't going to stick a camera up her skirt and capture private images of her body."

He conceded that the lack of nudity was a "live issue in this case."

As to the counts of attempted second-degree encouraging child sex abuse, the defense argued that the girl was not engaging in sexual conduct, which that statute requires.

The prosecutor countered that Buono took the photos hoping they would be explicit -- and that constituted an attempt toward the crime.

But the judge determined that the teenager's private parts were covered, and her conduct was not sexual.

"What he's taken a photograph of is a 13-year-old girl walking through a Target store, which is about as unlewd as you can get," he said.

It was Buono's behavior that was lewd, the judge said; it was not, however, outlawed.

"I'm extremely frustrated with this decision," he said. "It's upsetting to say the least."

After the ruling, Buono shook his lawyer's hand and hurried out of the room.

The prosecutor, outside of court, said it was disappointing to see a strong case fail on the limitations of the law.

"We knew what this man had done, and we knew why he had done it," Maloney said. "And it's incredibly frustrating that, under the current interpretation of Oregon law, this is not a crime."

-- Emily E. Smith

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