

Enrolled
House Bill 2393

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

CHAPTER

AN ACT

Relating to the dissemination of intimate images; creating new provisions; and amending ORS 163.472, 166.065 and 659A.270.

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

SECTION 1. ORS 163.472 is amended to read:

163.472. (1) A person commits the crime of unlawful dissemination of an intimate image if:

(a) The person, with the intent to harass, humiliate or injure another person, knowingly causes to be disclosed [*through an Internet website*] an identifiable image of the other person whose intimate parts are visible or who is engaged in sexual conduct;

(b) The person knows or reasonably should have known that the other person does not consent to the disclosure;

(c) The other person is harassed, humiliated or injured by the disclosure; and

(d) A reasonable person would be harassed, humiliated or injured by the disclosure.

(2)(a) Except as provided in paragraph (b) of this subsection, unlawful dissemination of an intimate image is a Class A misdemeanor.

(b) Unlawful dissemination of an intimate image is a Class C felony if the person has a prior conviction under this section at the time of the offense.

(3) As used in this section:

(a) "Disclose" includes, but is not limited to, transfer, publish, distribute, exhibit, advertise and offer.

(b) "**Identifiable**" means that a reasonable person would be able to recognize the individual depicted in the image as the other person.

[(b)] (c) "Image" includes, but is not limited to, a photograph, film, videotape, recording, digital picture and other visual reproduction, regardless of the manner in which the image is stored.

[(c)] (d) "Information content provider" has the meaning given that term in 47 U.S.C. 230(f).

[(d)] (e) "Interactive computer service" has the meaning given that term in 47 U.S.C. 230(f).

[(e)] (f) "Intimate parts" means uncovered human genitals, pubic areas or female nipples.

[(f)] (g) "Sexual conduct" means sexual intercourse or oral or anal sexual intercourse, as those terms are defined in ORS 163.305, or masturbation.

(4) This section does not apply to:

(a) Activity by law enforcement agencies investigating and prosecuting criminal offenses;

(b) Legitimate medical, scientific or educational activities;

(c) Legal proceedings, when disclosure is consistent with common practice in civil proceedings or necessary for the proper functioning of the criminal justice system;

- (d) The reporting of unlawful conduct to a law enforcement agency;
- (e) Disclosures that serve a lawful public interest;
- (f) Disclosures of images:
 - (A) Depicting the other person voluntarily displaying, in a public area, the other person's intimate parts or engaging in sexual conduct; or
 - (B) Originally created for a commercial purpose with the consent of the other person; or
 - (g) The provider of an interactive computer service for an image of intimate parts provided by an information content provider.

SECTION 2. (1) Irrespective of any criminal prosecution or the result thereof, a person depicted in an image disclosed in violation of ORS 163.472, or that person's parent or guardian, representative or estate, shall have a civil action to secure an injunction, damages or other appropriate relief against any and all persons whose actions are unlawful under ORS 163.472.

- (2) Upon prevailing in such action, the plaintiff may recover:
 - (a) The greater of:
 - (A) Special and general damages, including damages for emotional distress; or
 - (B) Statutory damages of \$5,000 per plaintiff against each defendant found liable under this section;
 - (b) An amount equal to any economic gain received by the defendant for the disclosure; and
 - (c) Punitive damages.
- (3) The court may award reasonable attorney fees to the prevailing plaintiff in an action under this section.
- (4) An emancipated minor, or the parent, parents or legal guardian of an unemancipated minor, shall be liable for any judgment recovered against such minor under this section, in an amount not to exceed \$5,000.
- (5) A civil action under this section does not affect a right or remedy available under any other law of this state.
- (6) An award of statutory damages described in subsection (2) of this section is not evidence of the existence or the amount of economic damages for purposes of restitution under ORS 137.106.

SECTION 3. ORS 166.065 is amended to read:

166.065. (1) A person commits the crime of harassment if the person intentionally:

- (a) Harasses or annoys another person by:
 - (A) Subjecting such other person to offensive physical contact; or
 - (B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response; [or]

[(C) Distributing a visual recording, as defined in ORS 163.665, of the other person engaged in sexually explicit conduct, as defined in ORS 163.665, or in a state of nudity, as defined in ORS 163.700, when the other person is under 18 years of age at the time of the recording;]

- (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

- (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.

(b) Harassment that is committed under the circumstances described in subsection (1)(c) of this section is committed in either the county in which the communication originated or the county in which the communication was received.

(3) Harassment is a Class B misdemeanor.

(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates:

(a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact and:

(A) The offensive physical contact consists of touching the sexual or other intimate parts of the other person; or

(B)(i) The victim of the offense is a family or household member of the person; and

(ii) The offense is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim; **or**

[(b) Subsection (1)(a)(C) of this section; or]

[(c) (b) Subsection (1)(c) of this section and:

(A) The person has a previous conviction under subsection (1)(c) of this section and the victim of the current offense was the victim or a member of the family of the victim of the previous offense;

(B) At the time the offense was committed, the victim was protected by a stalking protective order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person from contacting the victim;

(C) At the time the offense was committed, the person reasonably believed the victim to be under 18 years of age and more than three years younger than the person; or

(D)(i) The person conveyed a threat to kill the other person or any member of the family of the other person;

(ii) The person expressed the intent to carry out the threat; and

(iii) A reasonable person would believe that the threat was likely to be followed by action.

[(5) It is not a defense under subsection (1)(a)(C) of this section that the defendant did not know the age of the victim.]

[(6) (5) Oregon Criminal Justice Commission shall classify harassment as described in subsection (4)(a)(B) of this section as a person Class A misdemeanor under the rules of the commission.

[(7)(a) (6)(a) As used in this section:

(A) "Electronic threat" means a threat conveyed by electronic mail, the Internet, a telephone text message or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means.

(B) "Family or household member" has the meaning given that term in ORS 135.230.

(b) For purposes of subsection (4) of this section, an offense is witnessed if the offense is seen or directly perceived in any other manner by the minor child.

SECTION 4. ORS 659A.270 is amended to read:

659A.270. As used in ORS 659A.270 to 659A.285:

(1) "Covered employer" means an employer who employs six or more individuals in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault or stalking.

(2) "Eligible employee" means an employee who is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking.

(3) "Protective order" means an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 107.735, 124.005 to 124.040, 163.730 to 163.750 or 163.760 to 163.777 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

- (4) "Victim of domestic violence" means:
 - (a) An individual who has been a victim of abuse, as defined in ORS 107.705; or
 - (b) Any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805.
- (5) "Victim of harassment" means:
 - (a) An individual against whom harassment has been committed as described in ORS 166.065.
 - (b) Any other individual designated as a victim of harassment by rule adopted under ORS 659A.805.
- (6) "Victim of sexual assault" means:
 - (a) An individual against whom a sexual offense has been committed as described in ORS 163.305 to 163.467, **163.472** or 163.525; or
 - (b) Any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805.
- (7) "Victim of stalking" means:
 - (a) An individual against whom stalking has been committed as described in ORS 163.732;
 - (b) An individual designated as a victim of stalking by rule adopted under ORS 659A.805; or
 - (c) An individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.
- (8) "Victim services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

Passed by House March 20, 2019

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 Timothy G. Sekerak, Chief Clerk of House

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 Tina Kotek, Speaker of House

Passed by Senate June 3, 2019

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 Peter Courtney, President of Senate

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Approved:

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 Kate Brown, Governor

Filed in Office of Secretary of State:

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 Bev Clarno, Secretary of State