

HB 4146 -1 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Conner Egan, LPRO Analyst

Meeting Dates: 2/13, 2/15

WHAT THE MEASURE DOES:

The measure allows petitions for certain abuse court orders to be filed in the county in which the abuse occurred. The measure also removes the word “identifiable” from the crime of unlawful dissemination of an intimate image. Finally, the measure expands the crime of invasion of personal privacy in the second degree.

Detailed Summary:

Provides that a petition for a Family Abuse Prevention Act order, Elderly Persons and Persons with Disabilities Abuse Prevention Act order, or a sexual abuse restraining order may be filed in the county in which the abuse occurred. Removes the word “identifiable” from the crime of unlawful dissemination of an intimate image. Expands the crime of invasion of personal privacy in the second degree to include knowingly making or recording a videotape, picture, or other visual recording of another person who is dressing, undressing, bathing, or toileting if the other person has a reasonable expectation of personal privacy. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- The word identifiable in unlawful dissemination of an intimate image created litigation over freckles or birthmarks.
- Removing identifiable still requires the prosecutor to prove beyond a reasonable doubt who the victim is in the image.
- Other states' unlawful dissemination of intimate image laws.
- Concerns of removing identifiable, suggested new definition for identifiable.
- Allowing individuals to file restraining orders in the county where the abuse occurred protects individuals who experience abuse while working or traveling in different counties.
- Concerns of the burden on the respondent when an individual can file a restraining order in a county where neither resides in, how service can be effectuated, and obtaining witnesses.

EFFECT OF AMENDMENT:

-1 The amendment would remove all changes to the invasion of personal privacy in the second degree statute.

BACKGROUND:

In Oregon, a Family Abuse Prevention Act order, Elderly Persons and Persons with Disabilities Abuse Prevention Act order, or a sexual abuse restraining order can only be filed in the county where the petitioner or respondent resides. However, stalking protective orders can be filed in the county where the petitioner resides, respondent resides, or where the acts occurred.

- Family Abuse Prevention Act orders are a type of restraining order intended to provide protection from abuse by family, household members, or someone with whom the petitioner has had a sexual relationship with. The abuse must have been committed within the last 180 days.
- Elderly Persons and Persons with Disabilities Abuse Prevention Act order are a type of restraining order intended to provide abuse protection for people aged 65 or older or people who are vulnerable due to a disability. This restraining order addresses physical, verbal, financial, sexual abuse, and neglect. There isn't a necessary qualifying relationship for this type of restraining order.
- Sexual abuse restraining orders are intended to protect a victim from an abuser who sexually assaulted the petitioner but who is not family or a household member.

HB 4146 -1 STAFF MEASURE SUMMARY

A person commits the crime of unlawful dissemination of an intimate image when the person, with the intent to harass, humiliate or injure another person, knowingly causes to be disclosed an *identifiable* image of the other person whose intimate parts are visible or who is engaged in sexual conduct. Identifiable means that a reasonable person would recognize the individual depicted in the image as the other person. HB 2393 (2019) amended the crime of unlawful dissemination of an intimate image to include the definition of identifiable. Identifiable requires the victim is identified from the image alone and other evidence outside of the image, such as admissions of who is in the picture, would not by itself satisfy the identifiable requirement.

A person commits the crime of invasion of personal privacy in the second degree if the person:

- 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
- The other person is in a place and circumstances where the person has a reasonable expectation of personal privacy; or
- The person knowingly makes or records a photograph, motion picture, videotape or other visual recording of another person's intimate area without the consent of the other person; and
- The person being recorded has a reasonable expectation of privacy concerning the intimate area.

HB 2596 (2015) expanded invasion of personal privacy in the second degree to include conduct that did not require a sexual intent of the offender nor nudity, simply that a person was recording another person's intimate area(s), which includes intimate areas covered by undergarments, without consent.