

HOUSE BILL REPORT

E2SHB 1272

As Amended by the Senate

Title: An act relating to the wrongful distribution of intimate images.

Brief Description: Concerning the crime of disclosing intimate images.

Sponsors: House Committee on General Government & Information Technology (originally sponsored by Representatives Buys, Orwall and Pollet).

Brief History:

Committee Activity:

Public Safety: 2/13/15, 2/20/15 [DPS];

General Government & Information Technology: 2/23/15, 2/25/15 [DP2S(w/o sub PS)].

Floor Activity:

Passed House: 3/6/15, 98-0.

Senate Amended.

Passed Senate: 4/15/15, 48-0.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/24/15, 48-1.

Brief Summary of Engrossed Second Substitute Bill

- Creates the crime of disclosing intimate images.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Cassie Jones (786-7303).

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 7 members: Representatives Hudgins, Chair; Senn, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; McCabe, Morris and Takko.

Staff: Rachelle Harris (786-7137).

Background:

"Revenge porn" is the phrase commonly used to describe sexually explicit media that is publicly shared without the consent of the pictured individual. "Revenge porn" may be uploaded by ex-partners with an intention to shame or embarrass the individual in the image, or by hackers. Thirteen states have enacted laws which specifically target "revenge porn."

A class C felony is punishable by up to five years in prison and a \$10,000 fine.

A gross misdemeanor is punishable by up to 364 days in jail and a \$5000 fine.

Summary of Engrossed Second Substitute Bill:

"Disclosing" means transferring, publishing, disseminating, or making a digital depiction available for distribution or downloading through the facilities of a telecommunications network, or through other means of transferring computer programs or data to a computer.

"Intimate image" means any photograph, film, videotape, digital image, or other record of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts:

- sexual activity, including sexual intercourse and masturbation; or
- a person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or post-pubescent female nipple.

A person commits the crime of disclosing intimate images when the person knowingly discloses an intimate image of another person and the person disclosing the image:

- obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private; and
- knows or should have known that the depicted person has not consented to the disclosure.

A person who is under the age of 18 years old commits the crime of disclosing intimate images when the person:

- intentionally and maliciously disclosed an intimate image of another person;
- obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private; and
- knows or should have known that the depicted person has not consented to the disclosure.

The prohibitions in the bill do not apply to:

- images involving voluntary exposure in public or commercial settings;
- disclosures made in the public interest including, but not limited to, reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment; or
- an interactive computer service or a public or private mobile service, in regards to content provided by another person.

Disclosing intimate images is a gross misdemeanor on the first offense and a class C felony on the second or subsequent offense.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment adds an element to the crime of disclosing intimate images. In addition to the other elements, to be guilty of the crime of disclosing intimate images, the offender must know or reasonably should know that disclosure would cause harm to the depicted person. The Senate amendment also creates an affirmative defense to the crime of disclosing intimate images that applies when the defendant is a family member of a minor and did not intend harm or harassment in disclosing the images of the minor to other family or friends of the defendant.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Public Safety):

(In support of original bill) There is an acknowledgement in this bill that it will affect youth, the first offense is a misdemeanor, then a gross misdemeanor, and then a felony. Voluntary nudity in a public space is not encompassed by this bill when another person takes a picture. The bill also exempts artistic and law enforcement uses. There are protections in those areas. It is wrongful to distribute these types of images; human traffickers use the images to draw victims into bondage. Citizens in Washington are supportive of efforts to end human trafficking. A misdemeanor penalty seems to make sense for youth, but the penalty for adults should be higher. The damage from these images has a lifelong affect. For adults, this crime should be penalized at a felony level. As a felony, it gives victims a sense that the community values their privacy and safety. A felony is commensurate with the amount of damage that is done. These cases are complex and a felony signals to law enforcement that the investigation is worth the resources. There is mandatory diversion for a juvenile's first criminal offense. The level of nudity element needs to be modified because many of the images are damaging but do not meet the level of graphic nudity required by the bill. Victims of these types of crimes suffer major consequences to their family relationships, employment, and sense of security and trust. Legislation is needed to protect future victims. The images are public forever and victims can never be made whole.

(Neutral on original bill) There is a drafting consideration. The law table in the Judicial Information System database requires that the different levels of penalty (misdemeanor, gross misdemeanor, and felony) for the same offense need to be broken out into different subsections.

(With concerns on original bill) A felony is more appropriate in this context. This is a form of sexual violence against women and there needs to be strong penalty. Requiring an element of intent to prove emotional distress makes it too hard to prove because some commit this crime for boasting or profit, not to inflict emotional distress. The crime affects women almost exclusively.

(Opposed) None.

Staff Summary of Public Testimony (General Government & Information Technology):

(In support) This crime is particularly devastating in the age of the Internet. Powerful testimony previously heard about these incidents, demonstrates there is urgent need to address the issue. Fifteen states have enacted criminal legislation to address non-consensual pornography. None of these states indicate that the fiscal impact is significant. Without this law, prosecutors have trouble charging offenders under existing statutes. They don't have the means they need to obtain justice. There have been suicides and people having their lives upended. In the context of human trafficking this bill is really important. The malicious distribution of images is used in this context as a tool of manipulation or coercion by traffickers, this forces people into worsening behavior. People are deeply traumatized by this kind of thing. Images get traded by pedophiles on porn sites.

(Opposed) None.

Persons Testifying (Public Safety): (In support of original bill) Representative Buys, prime sponsor; and Tim Heffer and Darlene Lyle, The Justice and Mercy Foundation.

(Neutral on original bill) Mellani McAleenan, Administrative Office of the Courts.

(With concerns on original bill) David Ward, Legal Voice.

Persons Testifying (General Government & Information Technology): Nancy Sapiro, Legal Voice; Tim Heffer, Justice and Mercy Foundation; and Ken Morse, The Olympia Tea Party.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (General Government & Information Technology): None.