

SENATE BILL REPORT

E2SHB 1272

As Reported by Senate Committee On:
Law & Justice, March 24, 2015

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: Passed House: 3/06/15, 98-0.

Committee Activity: Law & Justice: 3/16/15, 3/24/15 [DP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Aldo Melchiori (786-7439)

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 with an intention to shame or embarrass the individual in the image. Thirteen states have enacted laws which specifically target revenge porn.

A class C felony is punishable by up to a maximum of five years in prison and a \$10,000 fine. The standard sentence for a felony that is not ranked on the sentencing grid is not more than one year of confinement, community restitution, or community custody and legal financial obligations. A gross misdemeanor is punishable by up to 364 days in jail and a \$5,000 fine.

Summary of Bill: 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 did not consent to the disclosure.

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.

A person who is under the age of 18 commits the crime of disclosing intimate images when the person intentionally and maliciously disclosed an intimate image of another person; obtained the image 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 did not consent to the disclosure.

The prohibitions in the act do not apply to the following:

- 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, a telecommunications network, or a broadband provider, in regard 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.

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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Victims do not have the resources to fight these crimes. The heightened standard for juvenile offenders will help ensure that they are only charged when appropriate and juvenile offenders will most often get diversion or an alternative sentence. This does not only affect the direct victims, but often hurts families and children. Pictures taken during an intimate relationship are most often meant to remain private. Once the images are posted online or sent by email, they are available forever. Individuals other than the poster may contact the victim, especially if their email or phone number is posted as well.

CON: The bill needs to be amended so that it does not sweep in unintended conduct, provide proportionate punishment, and does not sweep minors into the criminal justice system. There is no harm requirement.

Persons Testifying: PRO: Representative Buys, prime sponsor; David Ward, Legal Voice; D. Strong, Tom McBride, citizens.

CON: Shankar Narayan, American Civil Liberties Union of WA.

Persons Signed in to Testify But Not Testifying: No one.