
HOUSE BILL 1788

State of Washington

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By Representatives Wylie, Holy, Ryu, Carlyle, Jinkins, Pollet, Moscoso, Appleton, Vick, Sawyer, Tarleton, Orwall, Ormsby, Farrell, and Riccelli

Read first time 01/28/15. Referred to Committee on Public Safety.

1 AN ACT Relating to creating the crime of criminal invasion of
2 privacy via nonconsensual dissemination or disclosure of a sexual act
3 or intimate parts; adding a new section to chapter 9A.44 RCW; and
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.44
7 RCW to read as follows:

8 (1) A person may not knowingly disseminate or disclose an image
9 of another, identifiable person, whose intimate parts are exposed or
10 who is engaged in sexual contact, when the person knows or should
11 have known that the depicted person has not consented to the
12 dissemination or disclosure.

13 (2)(a) A person commits criminal invasion of privacy via
14 nonconsensual disclosure or dissemination of a sexual act or intimate
15 parts when the person knowingly discloses or disseminates an image of
16 another person who is:

17 (i) Identifiable from the image itself or information displayed
18 in connection with the image; and

19 (ii) Engaged in a sexual act or whose intimate parts are exposed;
20 and

21 (b) The person disclosing or disseminating the image:

1 (i) Obtained it under circumstances in which a reasonable person
2 would know or understand that the image was to remain private; and

3 (ii) Knows or should have known that the depicted person has not
4 consented to the disclosure or dissemination.

5 (3) This section does not apply to:

6 (a) Images involving voluntary exposure in public or commercial
7 settings; or

8 (b) Disclosures made in the public interest including, but not
9 limited to, the reporting of unlawful conduct, or the lawful and
10 common practices of law enforcement, criminal reporting, legal
11 proceedings, or medical treatment.

12 (4) Nothing in this section is construed to impose liability upon
13 the following entities solely as a result of content provided by
14 another person:

15 (a) An interactive computer service, as defined in 47 U.S.C. Sec.
16 230(f)(2);

17 (b) A provider of public or private mobile service, as defined in
18 section 13-214 of the public utilities act; or

19 (c) A telecommunications network or broadband providers.

20 (5) This section creates a private right of action against a
21 person who knowingly discloses or disseminates an image of another,
22 identifiable person, whose intimate parts are exposed or who is
23 engaged in sexual acts, when that person knows or should have known
24 that the depicted person has not consented to the disclosure.

25 (a) A private cause of action lies against a person who knowingly
26 distributes by any means a photograph, film, videotape, recording, or
27 any other reproduction of another, without the other's consent, if
28 (i) the person knew that the other person had a reasonable
29 expectation that the material would remain private, (ii) the
30 distributed material exposes an intimate part of the other person, or
31 shows the other person engaging in a sexual act, and (iii) the other
32 person suffers general or special damages.

33 (b) There is no liability for the person disclosing or
34 disseminating material under (a) of this subsection under the
35 following exceptions:

36 (i) Images involving voluntary exposure in public or commercial
37 settings; or

38 (ii) Disclosures made in the public interest including, but not
39 limited to, the reporting of unlawful conduct, or the lawful and

1 common practices of law enforcement, criminal reporting, legal
2 proceedings, or medical treatment.

3 (c) In addition to any other relief available at law, the court
4 may order equitable relief against the person violating (a) of this
5 subsection, including a temporary restraining order, or a preliminary
6 injunction or a permanent injunction ordering the defendant to cease
7 distribution of material. The court may grant injunctive relief
8 maintaining the confidentiality of a plaintiff using a pseudonym as
9 provided in (e) of this subsection.

10 (d) Any person deeming himself or herself injured by any act in
11 violation of this section has a civil action to recover the actual
12 damages sustained by the person. The court may also grant, after
13 holding a properly noticed hearing, reasonable attorneys' fees and
14 costs to the prevailing plaintiff.

15 (e)(i) A plaintiff in a civil proceeding pursuant to (a) of this
16 subsection, may proceed using a pseudonym, either John Doe, Jane Doe,
17 or Doe, for the true name of the plaintiff and may exclude or redact
18 from all pleadings and documents filed in the action other
19 identifying characteristics of the plaintiff. A plaintiff who
20 proceeds using a pseudonym and excluding or redacting identifying
21 characteristics as provided in this section shall file with the court
22 and serve upon the defendant a confidential information form for this
23 purpose that includes the plaintiff's name and other identifying
24 characteristics excluded or redacted. The court shall keep the
25 plaintiff's name and excluded or redacted characteristics
26 confidential.

27 (ii) All court decisions, orders, petitions, and other documents,
28 including motions and papers filed by the parties, shall be worded so
29 as to protect the name or other identifying characteristics of the
30 plaintiff from public revelation.

31 (f) The responsibility for excluding or redacting the name or
32 identifying characteristics of the plaintiff from all documents filed
33 with the court rests solely with the parties and their attorneys.
34 Nothing in this section requires the court to review pleadings or
35 other papers for compliance with this subsection (5)(f).

36 (6) For the purposes of this section:

37 (a) "Disclose" includes transferring, publishing, distributing,
38 or reproducing;

39 (b) "Disseminate" includes selling, distributing, exchanging, or
40 transferring possession, with or without consideration; or making a

1 depiction by computer available for distribution or downloading
2 through the facilities of a telecommunications network or through any
3 other means of transferring computer programs or data to a computer;

4 (c) "Identifying characteristics" includes, but is not limited
5 to, name or any part thereof, address or any part thereof, city or
6 unincorporated area of residence, age, marital status, relationship
7 to defendant, and race or ethnic background;

8 (d) "Image" includes a photograph, film, videotape, recording,
9 digital, or other reproduction;

10 (e) "Intimate parts" means the naked genitals, pubic area, or
11 female adult nipple; and

12 (f) "Sexual act" includes any act of sexual contact between
13 persons involving the sex organs of one person and the mouth or anus
14 of another whether the persons are of the same or opposite sex.

15 (7) Criminal invasion of privacy via nonconsensual dissemination
16 or disclosure of a sexual act or intimate parts is a class C felony.

17 (8) Nothing in this section is construed to:

18 (a) Alter or negate any rights, obligations, or immunities of an
19 interactive service provider under 47 U.S.C. Sec. 230; or

20 (b) Limit or preclude a plaintiff from securing or recovering any
21 other available remedy.

22 NEW SECTION. **Sec. 2.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

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