

FINAL BILL REPORT

2E2SHB 1272

C 7 L 15 E2

Synopsis as Enacted

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).

House Committee on Public Safety
House Committee on General Government & Information Technology
Senate Committee on Law & Justice

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:

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;
- knows or should have known that the depicted person has not consented to the disclosure; and
- know or reasonably should know that disclosure would cause harm to the depicted person.

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;

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.

- 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 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" 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.

It is an affirmative defense to a charge of Disclosing Intimate Images if the defendant is a family member of a minor and did not intend harm or harassment in disclosing images of the minor to the defendant's family or friends.

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

Votes on Final Passage:

House	98	0	
Senate	48	0	(Senate amended)
House			(House refused to concur)
Senate	48	0	(Senate amended)

Second Special Session

House	90	0
Senate	44	0

Effective: September 26, 2015

CERTIFICATION OF ENROLLMENT
SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1272

Chapter 7, Laws of 2015

64th Legislature
2015 2nd Special Session

CRIMES--DISTRIBUTION OF INTIMATE IMAGES

EFFECTIVE DATE: 9/26/2015

Passed by the House June 11, 2015
Yeas 90 Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate June 25, 2015
Yeas 44 Nays 0

BRAD OWEN
President of the Senate

Approved July 9, 2015 3:34 PM

JAY INSLEE
Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1272** as passed by House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED

July 9, 2015

Secretary of State
State of Washington

SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1272

Passed Legislature - 2015 2nd Special Session

State of Washington 64th Legislature 2015 Regular Session

By House General Government & Information Technology (originally sponsored by Representatives Buys, Orwall, and Pollet)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to the wrongful distribution of intimate images;
2 adding a new chapter to Title 9A RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** (1) A person commits the crime of
5 disclosing intimate images when the person knowingly discloses an
6 intimate image of another person and the person disclosing the image:

7 (a) Obtained it under circumstances in which a reasonable person
8 would know or understand that the image was to remain private;

9 (b) Knows or should have known that the depicted person has not
10 consented to the disclosure; and

11 (c) Knows or reasonably should know that disclosure would cause
12 harm to the depicted person.

13 (2) A person who is under the age of eighteen is not guilty of
14 the crime of disclosing intimate images unless the person:

15 (a) Intentionally and maliciously disclosed an intimate image of
16 another person;

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

19 (c) Knows or should have known that the depicted person has not
20 consented to the disclosure.

21 (3) This section does not apply to:

1 (a) Images involving voluntary exposure in public or commercial
2 settings; or

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

7 (4) This section does not impose liability upon the following
8 entities solely as a result of content provided by another person:

9 (a) An interactive computer service, as defined in 47 U.S.C. Sec.
10 230(f)(2);

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

13 (c) A telecommunications network or broadband provider.

14 (5) It shall be an affirmative defense to a violation of this
15 section that the defendant is a family member of a minor and did not
16 intend any harm or harassment in disclosing the images of the minor
17 to other family or friends of the defendant. This affirmative defense
18 shall not apply to matters defined under RCW 9.68A.011.

19 (6) For purposes of this section:

20 (a) "Disclosing" includes transferring, publishing, or
21 disseminating, as well as making a digital depiction available for
22 distribution or downloading through the facilities of a
23 telecommunications network or through any other means of transferring
24 computer programs or data to a computer;

25 (b) "Intimate image" means any photograph, motion picture film,
26 videotape, digital image, or any other recording or transmission of
27 another person who is identifiable from the image itself or from
28 information displayed with or otherwise connected to the image, and
29 that was taken in a private setting, is not a matter of public
30 concern, and depicts:

31 (i) Sexual activity, including sexual intercourse as defined in
32 RCW 9A.44.010 and masturbation; or

33 (ii) A person's intimate body parts, whether nude or visible
34 through less than opaque clothing, including the genitals, pubic
35 area, anus, or post-pubescent female nipple.

36 (7) The crime of disclosing intimate images:

37 (a) Is a gross misdemeanor on the first offense; or

38 (b) Is a class C felony if the defendant has one or more prior
39 convictions for disclosing intimate images.

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

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

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

5 NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new
6 chapter in Title 9A RCW.

Passed by the House June 11, 2015.

Passed by the Senate June 25, 2015.

Approved by the Governor July 9, 2015.

Filed in Office of Secretary of State July 9, 2015.

--- END ---

FINAL BILL REPORT

ESHB 2160

C 8 L 15 E2
Synopsis as Enacted

Brief Description: Concerning the distribution of intimate images.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Wylie, Orwall, Klippert and Buys).

House Committee on Judiciary
Senate Committee on Law & Justice

Background:

Liability may exist for some harms that result from the disclosure of embarrassing or emotionally distressful material.

The tort of invasion of privacy is based on the common law tort of public disclosure of private facts. Invasion of privacy occurs when a person gives publicity to a matter concerning the private life of another. A person who invades another's privacy is subject to liability to the other person if the matter publicized is of a kind that would be highly offensive to a reasonable person and is not of legitimate concern to the public.

The tort of intentional infliction of emotional distress, also known as the tort of outrage, occurs when a defendant engages in extreme and outrageous conduct to intentionally or recklessly inflict emotional distress on a plaintiff and the plaintiff actually suffers severe emotional distress as a result.

Summary:

A person is liable for distributing an intimate image of another if he or she intentionally and without consent distributes an intimate image that:

- was obtained under circumstances in which a reasonable person would know or understand that the image was to remain private; or
- was knowingly obtained by the person without authorization or by exceeding authorized access from the other person's property, accounts, messages, files, or resources.

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.

Several factors may be used to determine whether a reasonable person would know or understand that an image was to remain private.

An "intimate image" is any image or recording of an identifiable person that is taken in a private setting, is not a matter of public concern, and depicts:

- sexual activity; or
- a person's intimate body parts, whether nude or visible through less than opaque clothing.

Anyone who distributes an intimate image of another, and at the time of such distribution knows or reasonably should know that disclosure would cause harm to the depicted person, is liable for actual damages, reasonable attorneys' fees, and costs. The court also may award injunctive relief as it deems necessary. However, an interactive computer service, as defined by federal law, may not be held liable for content provided by another person.

It is an affirmative defense to a violation if a family member of a minor distributes certain images of the minor to other family or friends and did not intend any harm or harassment in the disclosure.

The court must make it known to a plaintiff that the plaintiff may use a confidential identity, and the court must use the confidential identity in all petitions, filings, or other documents.

Votes on Final Passage:

House	97	0	
Senate	48	0	(Senate amended)

Second Special Session

House	90	0
Senate	43	0

Effective: September 26, 2015

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2160

Chapter 8, Laws of 2015

64th Legislature
2015 2nd Special Session

CIVIL ACTIONS--DISTRIBUTION OF INTIMATE IMAGES

EFFECTIVE DATE: 9/26/2015

Passed by the House June 11, 2015
Yeas 90 Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate June 25, 2015
Yeas 43 Nays 0

BRAD OWEN
President of the Senate
Approved July 9, 2015 3:35 PM

JAY INSLEE
Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2160** as passed by House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED

July 9, 2015

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2160

Passed Legislature - 2015 2nd Special Session

State of Washington

64th Legislature

2015 Regular Session

By House Judiciary (originally sponsored by Representatives Wylie, Orwall, Klippert, and Buys)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to the distribution of intimate images; adding a
2 new section to chapter 4.24 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
5 to read as follows:

6 (1) A person distributes an intimate image of another person when
7 that person intentionally and without consent distributes, transmits,
8 or otherwise makes available an intimate image or images of that
9 other person that was:

10 (a) Obtained under circumstances in which a reasonable person
11 would know or understand that the image was to remain private; or

12 (b) Knowingly obtained by that person without authorization or by
13 exceeding authorized access from the other person's property,
14 accounts, messages, files, or resources.

15 (2) Any person who distributes an intimate image of another
16 person as described in subsection (1) of this section and at the time
17 of such distribution knows or reasonably should know that disclosure
18 would cause harm to the depicted person shall be liable to that other
19 person for actual damages including, but not limited to, pain and
20 suffering, emotional distress, economic damages, and lost earnings,

1 reasonable attorneys' fees, and costs. The court may also, in its
2 discretion, award injunctive relief as it deems necessary.

3 (3) Factors that may be used to determine whether a reasonable
4 person would know or understand that the image was to remain private
5 include:

6 (a) The nature of the relationship between the parties;

7 (b) The circumstances under which the intimate image was taken;

8 (c) The circumstances under which the intimate image was
9 distributed; and

10 (d) Any other relevant factors.

11 (4) It shall be an affirmative defense to a violation of this
12 section that the defendant is a family member of a minor and did not
13 intend any harm or harassment in disclosing the images of the minor
14 to other family or friends of the defendant. This affirmative defense
15 shall not apply to matters defined under RCW 9.68A.011.

16 (5) As used in this section, "intimate image" means any
17 photograph, motion picture film, videotape, digital image, or any
18 other recording or transmission of another person who is identifiable
19 from the image itself or from information displayed with or otherwise
20 connected to the image, and that was taken in a private setting, is
21 not a matter of public concern, and depicts:

22 (a) Sexual activity, including sexual intercourse as defined in
23 RCW 9A.44.010 and masturbation; or

24 (b) A person's intimate body parts, whether nude or visible
25 through less than opaque clothing, including the genitals, pubic
26 area, anus, or postpubescent female nipple.

27 (6) In an action brought under this section, the court shall:

28 (a) Make it known to the plaintiff as early as possible in the
29 proceedings of the action that the plaintiff may use a confidential
30 identity in relation to the action;

31 (b) Allow a plaintiff to use a confidential identity in all
32 petitions, filings, and other documents presented to the court;

33 (c) Use the confidential identity in all of the court's
34 proceedings and records relating to the action, including any
35 appellate proceedings; and

36 (d) Maintain the records relating to the action in a manner that
37 protects the confidentiality of the plaintiff.

38 (7) Nothing in this act shall be construed to impose liability on
39 an interactive computer service, as defined in 47 U.S.C. 230(f)(2) as

1 it exists on the effective date of this section, for content provided
2 by another person.

Passed by the House June 11, 2015.

Passed by the Senate June 25, 2015.

Approved by the Governor July 9, 2015.

Filed in Office of Secretary of State July 9, 2015.

--- END ---