

SENATE BILL REPORT

SB 5502

As of February 3, 2015

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

Brief Description: Concerning the distribution of intimate images.

Sponsors: Senators Padden, Rivers, Litzow, Darneille, Miloscia, Bailey, Angel, Fain, Warnick, Honeyford, Brown, Chase and Keiser.

Brief History:

Committee Activity: Law & Justice: 2/02/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: When a person distributes intimate images of another person without consent, the electronic images can spread quickly to many users. The person whose intimate images are distributed suffers a loss of privacy leading to emotional distress. Beyond the pain and suffering from emotional distress, the unauthorized distribution may also cause economic losses for medical bills or lost wages. Under current Washington laws, unauthorized sharing of intimate images is not a crime and does not create a specific civil action for damages.

Summary of Bill: A person whose intimate images are distributed without authorization has the right to take legal action against the person who made the intimate images available to others. The exposed person may sue for damages and may also ask for court-ordered action such as removing the images from public sites. A person is liable if they were trusted to keep the images private, but chose to share them with others and intended to cause distress. Alternatively, a person is liable if they take intimate images without permission from private records, accounts, or messages. When the claim is proved, the court awards either actual damages for pain, suffering and economic losses, or a \$10,000 lump-sum, whichever amount is greater.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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.

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

Staff Summary of Public Testimony: PRO: Distribution of intimate images is sometimes known as revenge porn, but the harm may go beyond revenge porn. A victim's images can be posted for extortion, often on off-shore sites. The site contacts a victim and extorts money to remove the images. Others view the postings in order to gain personal information about the victim for further exploitation. The victim may be threatened further. The victim's social media accounts, like Facebook or Twitter, may be mined and the intimate images sent out to the victim's friends and family.

It is hard for victims to come forward for help. When they do, it is difficult for authorities to investigate and prosecute this activity. Many victims do not contact the police for help. SB 5502 is a good beginning, but it doesn't go far enough. This behavior should not be tolerated. It should be a felony in addition to a civil cause of action. While the bill is laudable, there could be free speech concerns given the very broad definitions in the bill. Other states have similar laws and have managed to avoid overly broad language.

OTHER: The purpose of the bill is good, but it should go farther. The intent requirement may be too narrow to hold downstream re-posters accountable. Some re-posters may not meet the liability element of intent to cause emotional distress. The intimate image may be posted for other reasons such as to extort money, or to boast about a conquest, or because the poster thinks it is entertaining. The victim is still harmed and the poster should be liable to the victim for the harm. California allows victims who file civil actions to use a pseudonym which may make victims more willing to file actions for damages in court.

Persons Testifying: PRO: Gary Ernsdorf, King County Prosecutor; Anonymous, crime victim; Rowland Thompson, Allied Daily Newspapers.

OTHER: David Ward, Legal Voice.