



February 10, 2014

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Rep. Chris Lee

NOTICE OF HEARING

DATE: Thursday, February 13, 2014

TIME: 2:00 p.m.

PLACE: Conference Room 325, State Capitol, 415 South Beretania Street

**RE: TESTIMONY IN STRONG SUPPORT OF HB1750
RELATING TO PUBLIC ORDER**

Aloha, Committee on Judiciary:

The Pacific Alliance to Stop Slavery (PASS) supports **HB1750**. The shame and public humiliation associated with the unauthorized distribution of media of a person portrayed in a sexual manner, either naked or performing a sexual act, is enough in many cases to coerce women and children into further sexual exploitation and even sex trafficking.

PASS has helped Japanese nationals who end up in incapacitated and sexually abused, whose abuse is recorded by their abuser who uses the images to coerce them into prostitution. For these Japanese women, the threat of the shame resulting in having those images sent to their families back home was enough to ensnare them into sex trafficking where they were further abused and exploited.

For women and children, especially teens, who are not victims to sexual exploitation through this method, the harm is just as severe. Vindictive and abusive people using these images deliver lasting harm. Once these images are released on the internet, it is impossible to retrieve them all to repair the damage. Those images will always remain online.



PASS kindly urges you to pass **HB1750** as we must keep up with the new crimes associated with a changing technology.

Thank you for hearing this much needed legislation.

Sincerely,

Kathryn Xian
Executive Director



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

TESTIMONY FOR HOUSE BILL 1750, RELATING TO PUBLIC ORDER

House Committee on Judiciary
Hon. Karl Rhoads, Chair
Hon. Sharon E Har, Vice Chair

Thursday, February 13, 2014, 2:00 PM
State Capitol, Conference Room 414

Honorable Chair Rhoads and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 175 local members. On behalf of our members, we offer this testimony in support of, with proposed amendments for House Bill 1750, relating to public order.

This bill makes it a misdemeanor offense to nonconsensually distribute photographic, video, or sound representations of someone appearing nude or engaged in a sexual act. California and New Jersey have already enacted laws to make “revenge porn” a criminal offense, while 13 other states have introduced legislation to do so, according to the National Conference of State Legislatures. For better or worse, rapidly accelerating cellular and Internet technology has made it easy to disseminate and access intimate images, videos, and recordings. Unfortunately, after a friendship or romantic relationship ends, individuals will sometimes “get back” at their ex-lovers by publishing intimate or embarrassing items online or transmitting such items to friends, colleagues, employers, or the general public. Such an act can be personally disturbing and professionally compromising, causing the target to suffer emotional distress, familial ostracization, academic challenges, or workplace difficulties, all of which can linger indefinitely, while the victim is left without legal recourse.

Additionally, this bill could apply to pimps and johns who use the threat of releasing intimate representations as a means of coercing victims into sexual servitude. From a factual standpoint, in the case of sex-trafficking, the representations in question—usually photos or videos—are often taken “consensually,” albeit while the victim is suffering from the extreme trauma of exploitation. Currently, victims—who often come from cultures in which shame is a traditional value and potential method of coercion—have little recourse if perpetrators release damaging information about their activities.

In other states, free speech activists, such as the ACLU, have claimed that restricting an individual's ability to transmit lascivious material online, no matter how inflammatory, is unconstitutional. Citing recent U.S. Supreme Court decisions affirming the protection of unsavory speech (overturning laws banning videos that show graphic violence against animals in one case, while upholding the right of Westboro Baptist Church to engage in homophobic protests in another), these groups contend that the First Amendment is a guarantor of rights, not taste. Yet, as UCLA law professor Eugene Volokh has argued, vindictive and non-consensual pornography distribution is more likely to be deemed a form of obscenity, which the Supreme Court has deemed unworthy of First Amendment protection. Moreover, proscribing revenge porn would not impede the ability of someone to share salacious images that serve the public interest. Women who shared nude photos of former New York congressman Anthony Weiner, for example, would be protected by the Court's reasoning in *Syder v. Phelps* (the Westboro case), where the majority distinguished between speech concerning public and private matters, saying that more rigorously protecting the latter does not cloud society's interest in fostering a meaningful exchange of ideas.

That said, advocates for this bill have worked with the Honolulu Prosecutor's Office to draft a proposed HD1 that reflects the concerns of both victims and law enforcement. We concur with the intent of the prosecutor's proposed draft, which includes revenge porn as an offense under violation of privacy in the first degree, subject to a potential five-year prison sentence, \$10,000 fine, and mandatory sex offender registration. We request consideration of several changes to the prosecutor's draft, however, including clarifications regards mens rea, the addition of videos to the bill (pornographic videos, as well as photographic images, have been used to defame people's reputation and invade their privacy), and the addition of the definitions "nude" and "semi-nude" to 711-1100. To the latter point, we note that both the current draft of the bill and the prosecutor's proposal leave out a significant number of potential victims—those who may appear in photos while clad in non-transparent underwear, for example, which could be just as damaging as nude images. Since the proposed prosecutor's draft includes "intent to harm substantially the depicted person," adding semi-nude images to the bill would not alter an individual's ability to distribute semi-nude images *without* intending personal or professional harm, such as friends posting pictures of each other in swimwear on Facebook or Instagram. Accordingly, we encourage you to replace the contents of this bill with the following language:

"SECTION 1. Section 711-1100, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Nude" has the same meaning as in section 712-1210.

"Semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks and areola of the female breast as well as portions of the body covered by supporting straps or devices.

SECTION 2. Section 711-1110.9, Hawai'i Revised Statutes, is amended to read as follows:

"§711-1110.9 Violation of privacy in the first degree. (1) A person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law[~~;~~] :

(a) the person intentionally or knowingly installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place[~~;~~]; or

(b) the person **intentionally or knowingly** discloses an image **or video** of another identifiable person **in a nude or semi-nude condition**, or of another identifiable person engaging in sexual activity, without the depicted person's consent, with intent to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, **family relationships**, or personal relationships. This section shall not apply to activity, images, **or videos** voluntarily disclosed in public or commercial settings.

(2) Violation of privacy in the first degree is a class C felony. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval."

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director

HB1750

Submitted on: 2/11/2014

Testimony for JUD on Feb 13, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Emilie Harrell	Individual	Support	No

Comments: Distributing a sexual picture or video of someone without permission can be very damaging to a person both mentally and emotionally. To many personally photos or videos these days are being distributed without permission. We need to protect peoples privacy.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

HB1750

Submitted on: 2/12/2014

Testimony for JUD on Feb 13, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jasmine Ramos	Individual	Support	No

Comments: I support HB1750, because many people are hurt by their ex-boyfriend, ex-girlfriend, or former spouse, who publishes nude photos or videos as a way to hurt the ex; in a manner that some victims commit suicide. This policy will reduce depression and possible suicide among the victims.

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DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU
ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

LATE TESTIMONY

KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i**

February 13, 2014

RE: H.B. 1750; RELATING TO PUBLIC ORDER.

Chair Rhoads, Vice-Chair Har and members of the House Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony, supporting the intent of H.B. 1750, and proposing a H.D. 1, attached for your consideration. While the current language of H.B. 1750 attempts to address a problem that is certainly known to our Department, we believe a slightly different approach would be more effective in establishing this behavior as a new criminal offense.

Hawai'i's existing offense of Violation of Privacy in the First Degree covers scenarios where the perpetrator installs or uses a device to record another person in a private place in a stage of undress or sexual activity, without the depicted person's consent. It does not, however, cover scenarios where the depicted person initially agrees to the photographs or video—often in the context of a romantic relationship—only to have one partner distribute those images via the internet after the relationship ends. The latter scenario is a growing problem in Hawai'i and across the U.S. Indeed, on October 1, 2013, Governor Jerry Brown (D) of California signed into law new legislation that prohibits a “revenge porn” perpetrator from distributing sexually explicit pictures that were intended to be private. See California S.B. 255, 2013, Invasion of Privacy. Since then, a number of other states have also begun considering similar legislation.

Revenge porn violates the privacy of the person whose private image is spread across the internet, putting that person at significant risk, in terms of her (or his) safety, career, reputation, physical and mental health, personal relationships, and so forth. Some websites, such as UGotPosted, host sexually explicit photos of individuals (usually young women) without their permission, often accompanied by the individuals' private information. Typically, these postings are created by angry boyfriends or ex-husbands, and the comments posted by viewers online are overwhelmingly degrading to the victim. Moreover, websites such as UGotPosted require the poster to include a link to the depicted person's (i.e. the victim's) Facebook, Twitter, or Tumblr page, along with the victim's full name, age, and location.

Given the growing problems stemming from this type of activity, the Department strongly agrees that a new criminal offense should be created to discourage and/or appropriately punish those who would violate someone's privacy in this fashion. The proposed H.D. 1, attached, establishes this offense as a new subsection of Violation of Privacy in the First Degree, utilizing language from Hawai'i's existing offenses of Violation of Privacy in the First Degree (HRS §711-1110.9), obscenity (HRS §712-1210), and extortion (HRS §707-764), to impose meaningful consequences on perpetrators who distribute private images with intent to degrade, humiliate, or cause other harm to the victims.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 1750, using the proposed H.D. 1. Thank you for the opportunity to testify on this matter.

A BILL FOR AN ACT

RELATING TO PUBLIC ORDER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 711-1110.9, Hawai'i Revised Statutes,
2 is amended to read as follows:

3 "§711-1110.9 Violation of privacy in the first degree.

4 (1) A person commits the offense of violation of privacy in the
5 first degree if, except in the execution of a public duty or as
6 authorized by law[~~7~~] :

7 (a) the person intentionally or knowingly installs or
8 uses, or both, in any private place, without consent of the
9 person or persons entitled to privacy therein, any device for
10 observing, recording, amplifying, or broadcasting another person
11 in a stage of undress or sexual activity in that place[~~7~~]; or

12 (b) the person knowingly discloses an image or video of
13 another identifiable person in the nude, as defined in section
14 712-1210, or of another identifiable person engaging in sexual
15 activity, without the depicted person's consent, with intent to
16 harm substantially the depicted person with respect to that
17 person's health, safety, business, calling, career, financial
18 condition, reputation, or personal relationships. This section

1 shall not apply to activity, images or videos voluntarily
2 disclosed by the depicted person in public or commercial
3 settings.

4 (2) Violation of privacy in the first degree is a class C
5 felony. In addition to any penalties the court may impose, the
6 court may order the destruction of any recording made in
7 violation of this section."

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon approval.

INTRODUCED BY: _____

Report Title:

Offenses Against Public Order; Nonconsensual Distribution of Sexual Recordings

Description:

Establishes a criminal offense for disclosing an image or video of another identifiable person in the nude or engaging in sexual activity, without the depicted person's consent, and with intent to harm substantially the depicted person.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

**ON THE FOLLOWING MEASURE:
H.B. NO. 1750, RELATING TO PUBLIC ORDER.**

**BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY**

LATE TESTIMONY

DATE: Thursday, February 13, 2014 **TIME:** 2:00 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): WRITTEN TESTIMONY ONLY
(For more information contact Albert Cook, Deputy Attorney General, at 586-0940.)

Chair Rhodes and Members of the Committee:

The Department of the Attorney General supports the intent of this bill.

This bill creates a new offense regarding disclosing without consent nude images or images of a person engaged in sexual activity with the intent to harm the depicted person.

The Department of the Attorney General agrees with and adopts the reasoning and amendments proposed in the testimony provided by the Department of the Prosecuting Attorney of the City and County of Honolulu, a copy of which is attached hereto.

We respectfully ask the Committee to pass this bill using the proposed amendments provided by the Department of the Prosecuting Attorney of the City and County of Honolulu.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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