

**SB 2375**

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO PUBLIC ORDER.

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

1       SECTION 1. Chapter 711, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4       "§711-       Unlawful distribution of sexual representation.

5       (1) A person commits the offense of unlawful distribution of  
6 sexual representation if a person, without the consent of the  
7 person represented, intentionally or knowingly reproduces,  
8 distributes, exhibits, publishes, transmits, or otherwise  
9 disseminates a representation of a nude person or of a person  
10 engaging in sexual conduct.

11       (2) In addition to any other penalty that the court may  
12 impose, the court may order the destruction of any  
13 representation used to commit a violation of this section.

14       (3) As used in this section:

15       "Nude" means unclothed or in attire, including but not  
16 limited to sheer or see-through attire, so as to expose to view  
17 any portion of the pubic hair, anus, cleft of the buttocks,



1 genitals or any portion of the female breast below the top of  
2 the areola.

3 "Representation" means any photographic image, video  
4 recording, or sound recording that the defendant acquired with  
5 the consent of the person represented.

6 "Sexual conduct" means acts of masturbation, sexual  
7 intercourse, or any touching of the sexual or other intimate  
8 parts of any person, whether directly or through the clothing or  
9 other material intended to cover the sexual or other intimate  
10 parts, for the purpose of sexual stimulation or gratification.

11 (4) Unlawful distribution of sexual representation is a  
12 misdemeanor; provided that a person convicted under this section  
13 shall be subject to a fine of not less than \$1,000."

14 SECTION 2. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Shiranne Chhun Aubrey  
Will Cyro



S.B. NO. 2375

*Mark R.*  
*Kevin Lee*  
*[Signature]*



# S.B. NO. 2375

**Report Title:**

Offenses Against Public Order; Nonconsensual Distribution of Sexual Recordings

**Description:**

Establishes a criminal offense for distributing without permission a sexual recording made or obtained with the consent of the person represented in the recording.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

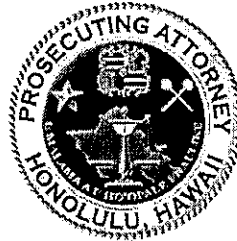


DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE GLENN WAKAI, CHAIR**  
**SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS**  
**Twenty-Seventh State Legislature**  
**Regular Session of 2014**  
**State of Hawai'i**

February 4, 2014

**RE: S.B. 2375; RELATING TO PUBLIC ORDER.**

Chair Wakai, Vice-Chair Nishihara and members of the Senate Committee on Technology and the Arts, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony, supporting the intent of S.B. 2375, and proposing a S.D. 1, attached for your consideration. While the current language of S.B. 2375 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.

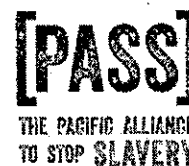
Hawai'i's existing offense of Violation of Privacy in the First Degree covers scenarios where the perpetrator installs or uses a device to record another person in a private place in a stage of undress or sexual activity, without the depicted person's consent. It does not, however, cover scenarios where the depicted person initially agrees to the photographs or video—typically in the context of a romantic relationship—only to have one partner distribute those images across 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 SB255, 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. Websites, such as UGotPosted, host sexually explicit photos of individuals (usually young women) without their permission, and those images are often accompanied by links to their private information and social media pages. 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 also 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 S.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 S.B. 2375, using the proposed S.D. 1. Thank you for the opportunity to testify on this matter.



February 3, 2014

COMMITTEE ON TECHNOLOGY AND THE ARTS

Senator Glenn Wakai, Chair  
Senator Clarence K. Nishihara, Vice Chair  
Les Ihara Jr.  
Jill N. Tokuda  
Sam Slom

NOTICE OF HEARING

DATE: Tuesday, February 4, 2013  
TIME: 1:15 pm  
PLACE: Conference Room 414, State Capitol, 415 South Beretania Street

**RE: TESTIMONY IN SUPPORT OF SB23765  
RELATING TO PUBLIC ORDER**

Establishes a criminal offense for distributing without permission a sexual recording made or obtained with the consent of the person represented in the recording.

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Dear Committee on Technology and the Arts:

The Pacific Alliance to Stop Slavery (PASS) supports **SB2375**. 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 **SB2375** 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  
Pacific Alliance to Stop Slavery





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

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## TESTIMONY FOR SENATE BILL 2375, RELATING TO PUBLIC ORDER

Senate Committee on Technology and the Arts

Hon. Glenn Wakai, Chair

Hon. Clarence K. Nishihara, Vice Chair

Tuesday, February 4, 2014, 1:15 PM

State Capitol, Conference Room 414

Honorable Chair Wakai and committee members:

I am Kris Coffield, representing the IMU Alliance, 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 Senate Bill 2375, 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.

That said, to comport with national legislative and juridical trends on this issue and fully address and deter the severity of the crime, we encourage the committee to amend the grade of offense contained in the bill to a class C felony. This can be accomplished by revising page 2, lines 11 to 13 to read: "(4) Unlawful distribution of sexual representation is a class C felony; provided that a person convicted under this section shall be subject to a fine of not less than \$1,000." We also urge the committee to predicate the offense upon emotional distress suffered by a victim by amending page 1, lines 4 to 10 to read: "§711- Unlawful distribution of sexual representation. (1) A person commits the offense of unlawful distribution of sexual representation if a person, without the consent of the person represented, with intent to cause serious emotional distress, and the represented person suffers serious emotional distress, distributes, exhibits, publishes, transmits, or otherwise disseminates a representation of a nude person or of a person engaging in sexual conduct."

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

Sincerely,  
Kris Coffield  
*Legislative Director*

wakai3 - Kristen

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**From:** mailinglist@capitol.hawaii.gov  
**ent:** Tuesday, February 04, 2014 10:17 AM  
**To:** TECTestimony  
**Cc:** njgarret@hawaii.edu  
**Subject:** \*Submitted testimony for SB2375 on Feb 4, 2014 13:15PM\*

**SB2375**

Submitted on: 2/4/2014

Testimony for TEC on Feb 4, 2014 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Nick	Individual	Support	No

Comments:

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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**wakai3 - Kristen**

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**From:** mailinglist@capitol.hawaii.gov  
**ent:** Tuesday, February 04, 2014 10:20 AM  
**To:** TECTestimony  
**Cc:** jbnelson@hawaii.edu  
**Subject:** \*Submitted testimony for SB2375 on Feb 4, 2014 13:15PM\*

**SB2375**

Submitted on: 2/4/2014

Testimony for TEC on Feb 4, 2014 13:15PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jonathan Nelson	Individual	Support	No

**Comments:**

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