

Honolulu, Hawaii

MAR 22 2018

RE: H.B. No. 2134  
H.D. 1  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2134, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO VIOLATION OF PRIVACY,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the offense of violation of privacy in the first degree to:

- (1) Prohibit disclosure or threatened disclosure of an image or video when the disclosure or threatened disclosure is an act of revenge or retribution;
- (2) Enhance the penalty if the person or persons entitled to privacy or the depicted person is a minor; and
- (3) Require that any recording or image that is a violation of the offense of violation of privacy in the first degree be sealed and remain confidential.

Your Committee received testimony in support of this measure from the Hawaii State Commission on the Status of Women, Department of the Prosecuting Attorney of the City and County of Honolulu, Honolulu Police Department, UNITE, IMUAlliance, Hawaii Women Lawyers, Oahu County Committee on Legislative Priorities of the Democratic Party of Hawaii, and one individual.



Your Committee finds that the increasing prominence and ubiquity of personal electronics and social media has created conditions that can be easily exploited by persons with the intention to violate the privacy of others. "Revenge pornography", or the nonconsensual disclosure of images or videos of individuals engaged in a sex act or in the nude, is a serious issue that disproportionately affects women. Revenge pornography has a broad spectrum of consequences ranging from embarrassment and humiliation to forced sex trafficking. This measure will explicitly include acts of revenge pornography within the offense of violation of privacy in the first degree.

Your Committee notes that nudity and sexual conduct in public places are already discouraged as a matter of public policy and there is some concern that allowing an exception to the exemption for such conduct in public places if the disclosure is an act of revenge or retribution creates an expectation of privacy in public places. Your Committee also notes concern regarding the meaning of "retribution", and the types of contexts that might arise for prosecution based on this term. As this measure proceeds, your Committee encourages further discussion on these issues.


Your Committee has amended this measure by:

- (1) Deleting the enhanced penalty if the person or persons entitled to privacy or the depicted person is a minor;
- (2) Deleting the exception to the exemption for conduct in public places if the disclosure is an act of revenge or retribution; and
- (3) Inserting an effective date of July 1, 2035, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2134, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2134, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,



BRIAN T. TANIGUCHI, Chair



