

STAND. COM. REP. NO. 3162

Honolulu, Hawaii

APR - 1 2014

RE: H.B. No. 1750
H.D. 1
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 1750, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC ORDER,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish the offense of unlawful distribution of sexual representation if a person, without the consent of the person represented, intentionally or knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a representation of a nude person or of a person engaging in sexual conduct;
- (2) Provide exceptions to the offense of unlawful distribution of sexual representation; and
- (3) Establish that the offense of unlawful distribution of sexual representation is a misdemeanor.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney, City and County of Honolulu; Department of the Prosecuting Attorney, County of Maui; Office of the Prosecuting Attorney, County of Kauai; Police Department, County of Maui; IMUAlliance; AT&T; and three individuals.



Your Committee finds that on October 1, 2013, the Governor of California signed into law legislation that prohibits a "revenge porn" perpetrator from distributing sexually explicit pictures that were intended to be private. Since then, a number of other states have considered similar legislation. According to the IMUAlliance, advancements in cellular and internet technology have made it easy to disseminate and access intimate images, videos, and recordings that depict an individual in the nude or engaged in sexual activity. These images and recordings can be used to retaliate against the depicted individual. For the depicted individual, this dissemination can result in emotional distress, loss of personal relationships, financial losses, and other consequences. This measure addresses the concerns and ramifications of the dissemination of a representation of a nude person or of a person engaging in sexual conduct without the depicted person's consent by making this action of dissemination a criminal offense.

Your Committee notes the written testimony submitted by the Department of the Prosecuting Attorney of the City and County of Honolulu that explains that the 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. The City and County of Honolulu Prosecuting Attorney suggested that this existing law be amended to include the dissemination of a representation of a nude person or of a person engaging in sexual conduct without the depicted person's consent.

Accordingly, your Committee has amended this measure by deleting its contents and inserting language suggested by the Department of the Prosecuting Attorney of the City and County of Honolulu to amend section 711-1110.9, Hawaii Revised Statutes, to:

- (1) Add that a person commits the offense of violation of privacy in the first degree if the person knowingly discloses an image or video of another identifiable person either in the nude or engaging in sexual contact without the consent of the depicted person with the intent to harm substantially the depicted person with respect to specified factors;
- (2) Exclude the application of the offense of violation of privacy in the first degree to images, videos, or



conduct that is voluntarily disclosed in public or commercial settings; and

- (3) Specify that the offense of violation of privacy in the first degree is not to be construed to impose liability on an electronic communication service or remote computer service.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1750, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1750, 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 and
Labor,

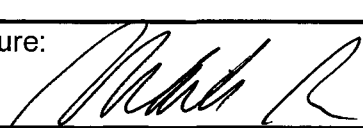


CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1750 HD1	JDL	3/21/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
GALUTERIA, Brickwood				✓
IHARA, Jr., Les	✓			
SOLOMON, Malama	✓			
SLOM, Sam	✓			
TOTAL	6			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original File with Committee Report Yellow Clerk's Office Pink Drafting Agency Goldenrod Committee File Copy				

*Only one measure per Record of Votes