

STAND. COM. REP. NO.

609

Honolulu, Hawaii

FEB 24 2021

RE: S.B. No. 413
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 413 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 exclude violation of privacy in the first degree, and certain subsections of violation of privacy in the second degree, from qualifying for pleas of deferred acceptance of guilty or nolo contendere.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu. Your Committee received testimony in opposition to this measure from the Office of the Public Defender.

Your Committee finds that under existing law a defendant may request a deferral of their criminal charges under certain circumstances. The trial court, after considering the merits of the case, and hearing argument from the prosecutor, may grant a deferral of the proceedings, only if the trial court finds that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and welfare of society do not require that the defendant suffer the penalty imposed by law. The court may ultimately discharge the defendant and dismiss the charge if certain conditions are met. Several exclusions apply to this provision, including, among others, when the offense



is a class A felony, the defendant has a prior felony conviction, a firearm was used in the offense, or if the defendant is accused of certain serious offenses.

Your Committee further finds that the unauthorized, surreptitious recording of a person in a state of undress or participating in a private sexual act is a criminal violation of a person's right to privacy. The release of or threat to release such recordings or images, sometimes referred to as revenge porn, can cause irreparable personal, professional, and financial harm. This measure excludes such instances of invasion of privacy offenses from qualifying for deferred acceptance of guilty or nolo contendere pleas in order to hold perpetrators to a higher level of accountability for their actions and provide a deterrent for repeat offenses.

Your Committee has amended this measure by inserting an effective date of May 6, 2137, 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 S.B. No. 413, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 413, S.D. 1, and be placed on the calendar for Third Reading.

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



KARL RHOADS, Chair



