

JAN 19 2018

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# A BILL FOR AN ACT

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RELATING TO VIOLATION OF PRIVACY.

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

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

4       "§711-       Violation of privacy of a minor. (1) A person  
5 commits the offense of violation of privacy of a minor if,  
6 except in the execution of a public duty or as authorized by  
7 law:

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

14       (b) The person knowingly discloses an image or video of an  
15 identifiable minor either in the nude, as defined in  
16 section 712-1210, or engaging in sexual conduct, as  
17 defined in section 712-1210 with intent to harm



1           substantially the depicted minor with respect to that  
2           person's health, safety, business, calling, career,  
3           education, financial condition, reputation, or  
4           personal relationships or as an act of revenge or  
5           retribution; provided that nothing in this paragraph  
6           shall be construed to impose liability on a provider  
7           of "electronic communication service" or "remote  
8           computing service" as those terms are defined in  
9           section 803-41, for an image or video disclosed  
10          through the electronic communication service or remote  
11          computing service by another person.

12          (2) Violation of privacy of a minor is a class B felony.  
13          In addition to any penalties the court may impose, the court may  
14          order the destruction of any recording made in violation of this  
15          section. When sentencing a person convicted of this offense,  
16          the court shall consider the age of the person convicted  
17          relative to the age of the person whose privacy was violated.

18          (3) Any recording or image made or disclosed in violation  
19          of this section shall be sealed and remain confidential.



1        (4) For purposes of this section, "minor" means a person  
2        who is less than eighteen years of age at the time the device  
3        was installed or the image or video was created.

4        §711-        Threatening to violate privacy. (1) A person  
5        commits the offense of threatening to violate privacy if the  
6        person threatens to disclose an image or video of an  
7        identifiable person either in the nude, as defined in section  
8        712-1210, or engaging in sexual conduct, as defined in section  
9        712-1210.

10        (2) Threatening to violate privacy is a misdemeanor;  
11        provided that if the subject of the threat was under the age of  
12        eighteen at the time the image or video was created, the court  
13        shall sentence a person convicted of this offense to a fine of  
14        not less than \$1,000 and imprisonment for a term of not less  
15        than six months. When sentencing a person convicted of this  
16        offense when the subject of the threat was under the age of  
17        eighteen at the time the image or video was created, the court  
18        shall consider the age of the person convicted relative to the  
19        age of the subject of the threat."

20        SECTION 2. Section 711-1110.9, Hawaii Revised Statutes, is  
21        amended to read as follows:



1           "§711-1110.9 Violation of privacy in the first degree.

2       (1) A person commits the offense of violation of privacy in the  
3 first degree if, except in the execution of a public duty or as  
4 authorized by law:

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

11          (b) The person knowingly discloses an image or video of  
12 another identifiable person either in the nude, as  
13 defined in section 712-1210, or engaging in sexual  
14 conduct, as defined in section 712-1210, without the  
15 consent of the depicted person, with intent to harm  
16 substantially the depicted person with respect to that  
17 person's health, safety, business, calling, career,  
18 financial condition, reputation, or personal  
19 relationships[+] or as an act of revenge or  
20 retribution; provided that:



(i) This paragraph shall not apply to images or videos of the depicted person made:

(A) When the person was voluntarily nude in public or voluntarily engaging in sexual conduct in public[+] unless the disclosure was an act of revenge or retribution or

(B) Pursuant to a voluntary commercial transaction; and

(ii) Nothing in this paragraph shall be construed to impose liability on a provider of "electronic communication service" or "remote computing service" as those terms are defined in section 803-41, for an image or video disclosed through the electronic communication service or remote computing service by another person.

(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.

(3) Any recording or image made or disclosed in violation of this section shall be sealed and remain confidential."



# S.B. NO. 2348

1       SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4       SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6       SECTION 5. This Act shall take effect upon its approval.  
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# S.B. NO. 2348

**Report Title:**

Violation of Privacy; Revenge Pornography

**Description:**

Establishes threatening to violate privacy as a misdemeanor offense. Expands the offense of violation of privacy in the first degree to specifically include disclosure of revenge pornography. Establishes violation of privacy of a minor, including disclosure of revenge pornography, as a felony offense. Requires that recordings that violate privacy be sealed by the court and be made confidential.

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

