



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-THIRD LEGISLATURE, 2026**

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 1681, RELATING TO PRIVACY.

**BEFORE THE:**  
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

**DATE:** Tuesday, February 10, 2026      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Tricia M. Nakamatsu, Deputy Attorney General

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Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of the bill is to establish the offense of nonconsensual distribution of an intimate image. While the Department appreciates the intent of this bill, we recommend a number of amendments that would increase the effectiveness of the proposed offense.

**Terminology**

The bill uses inconsistent terminology, which creates ambiguity. For example, on page 1, lines 4 through 9, the words "distribution"; "disseminate"; and "disclosure" seem to be used interchangeably, while referring to the same act. Instead, one term should be selected and used consistently throughout the bill.

The criminal states of mind listed are also referred to inconsistently throughout the bill. This lack of consistency makes the offense difficult to prove. The states of mind on page 1, lines 7 ("intentionally") and 9 ("reckless") appear to be referring to the same act under two different states of mind. If this is referring to a single act, the preferred state of mind should be stated on page 1, line 7 and deleted from line 9, as it is done in a similar provision found on page 2, line 11.

Certain phrases and terminology are used throughout the bill that are unclear and lacking in definitions. Phrases such as, "reveals the identity" (page 1, line 10; page

2, lines 11-12); "identifiable individual" (page 3, line 4); and "intimate content creators" (page 3, lines 10-11) should be revised or defined. Also, the definition of "electronic communication service" at page 6, lines 1-2, is a term that is defined elsewhere in chapter 711, (section 711-1111(2), HRS), so, to avoid repetition, the term should be added to the general definitions for chapter 711, in section 711-1100, HRS.

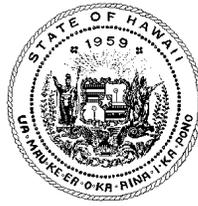
### **Streamline wording**

For more effective application and enforcement, certain portions of the offense should be more succinctly worded. For example, subsections (1)(a)(ii), on page 2, lines 1-4, and (1)(b)(ii), on page 2, lines 19-21, would be easier to interpret if they were revised to read: "Intentionally disseminates an intimate image of another person without the other person's affirmative consent."

### **Third party liability**

The portions of the proposed offense that refer to the actions of a "third party" should be deleted (see page 1, lines 15-17, and page 2, lines 16-18). It is unlikely that prosecutors would be able to prove a defendant had the requisite state of mind to anticipate a third party's actions in these types of circumstances.

Thank you for considering our comments. If the Committee decides to pass this bill, the Department would be happy to work with stakeholders to amend the wording.



STATE OF HAWAII – Ka MOKU'ĀINA 'O HAWAI'I  
**CRIME VICTIM COMPENSATION COMMISSION**  
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**MARI McCAIG BELLINGER**  
Chair

**CLIFTON Y.S. CHOY**  
Commissioner

**JO KAMAE BYRNE**  
Commissioner

**PAMELA FERGUSON-BREY**  
Executive Director

**TESTIMONY ON HOUSE BILL 1681  
RELATING TO PRIVACY**

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

House Committee on Judiciary & Hawaiian Affairs  
Representative David A. Tarnas, Chair  
Representative Mahina Poepoe, Vice Chair

Tuesday, February 10, 2026; 2:00 PM  
State Capitol, Conference Room 325 & Videoconference

Good afternoon, Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on Judiciary & Hawaiian Affairs. Thank you for providing the Crime Victim Compensation Commission (“Commission”) with the opportunity to testify in support of House Bill 1681. This bill adds a new section to chapter 711, creating the offense, nonconsensual distribution of an intimate image. The new section requires affirmative consent prior to the distribution of any identifiable intimate-images and prohibits the nonconsensual distribution of identifiable intimate-images, including digitally forged images.

The Commission provides compensation for violent crime victims to pay un-reimbursed expenses for crime-related losses due to physical or mental injury or death. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission. The Commission collaborates with victim advocates and victim service providers in supporting victim-centered policy and legislation.

Nonconsensual distribution of intimate images is a recognized form of technology-facilitated sexual violence and has a profound impact on victims. Victims often experience depression, suicidal thoughts, shame and self-blame. The Commission supports clear prohibition and penalties for this offense.

The Commission urges the legislature to pass House Bill 1681. Thank you for providing the Commission with the opportunity to testify today.

JON N. IKENAGA  
PUBLIC DEFENDER

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February 9, 2026

**HB 1681: RELATING TO PRIVACY**

**Chair Tarnas, Vice-Chair Poepoe, and Members of the Committee on  
Judiciary and Hawaiian Affairs:**

The Office of the Public Defender (OPD) offers comments on **HB 1681** and clarifies that our comments are limited solely to Section (6) of the bill, which proposes to extend the statute of limitations for prosecutions of nonconsensual distribution of an intimate image, notwithstanding the general limitations framework set forth in Hawai'i Revised Statutes (HRS) § 701-108.

Statutes of limitations serve a critical and constitutionally grounded function in the criminal legal system. Limitation periods are designed to promote fairness, reliability, and due process by ensuring that criminal charges are brought while evidence is still available, memories remain intact, and accused persons are able to meaningfully defend against allegations.

Over time, evidence degrades, witnesses become unavailable, memories fade, and digital data may be lost, altered, or taken out of context. Statutes of limitation protect against the inherent risk of wrongful or unreliable prosecutions based on stale evidence, while also encouraging prompt investigation and charging decisions by the State.

HRS § 701-108 reflects a carefully calibrated legislative balance between the State's interest in prosecution and the individual's interest in finality after a defined period of time. The statute establishes differentiated limitation periods based on offense classification, severity, and public safety considerations. It

embodies the Legislature’s longstanding judgment as to when prosecutions become unreliable or unjust due to the passage of time.<sup>1</sup>

By expressly providing that the new offense is governed “notwithstanding section 701-108,” Section (6) of the bill departs from this established framework and creates limitations that are significantly longer than what generally applies to comparable offenses.

Section (6) proposes limitation periods of up to five years for misdemeanors and seven years for felonies, coupled with a victim-discovery rule that permits prosecution up to three years after the offense is discovered or reasonably should have been discovered. In practice, this creates the potential for prosecutions to be initiated many years after the alleged conduct.

While the OPD recognizes the serious harms associated with nonconsensual dissemination of intimate images, extending criminal exposure for prolonged and indeterminate periods raises significant fairness concerns. The addition of a discovery-based extension is particularly impactful in cases involving digital content, where questions about when an image was posted, accessed, altered, or discovered can be complex and highly contested, increasing litigation risk and evidentiary uncertainty.

The OPD urges caution in expanding criminal statutes of limitation in a manner that overrides the general protections of HRS § 701-108 without a clear showing that existing limitation periods are inadequate. Any deviation from the State’s uniform statute of limitations framework should be narrowly tailored and supported by compelling justification, as such changes alter fundamental expectations about finality, repose, and fairness in the criminal justice system.

Thank you for the opportunity to comment on this measure.

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<sup>1</sup> With some limited exceptions, HRS § 701-108 delineates time limitations for prosecutions as follows:

Class A felonies = 6 years, other felonies = 3 years, and misdemeanors = 2 years.



**To:** House Judiciary & Hawaiian Affairs Committee  
**Re:** Testimony in SUPPORT of HB 1681

Dear Chair Tarnas, Vice Chair Poepoe, and the Members of House Judiciary & Hawaiian Affairs Committee,

Members of AAUW of Hawai'i thank you for this opportunity to testify in support of HB 1681, which establishes the offense of nonconsensual distribution of an intimate image.

Image-based abuse survivors often suffer from "depression, fear and anxiety as well as damage to reputations, job loss and social isolation. Some survivors have died by suicide after discovering deepfake videos were made with their likeness. No matter what form the abuse takes, it has a devastating effect on survivors that can last for years." See <https://www.joyfulheartfoundation.org/our-work/policy-and-advocacy/image-based-abuse-initiative/> (retrieved Feb. 6, 2026).

It was found that as of 2023 "98% of deepfake visuals are pornographic in nature, and 99% target women." See <https://www.securityhero.io/state-of-deepfakes/> (retrieved Feb. 6, 2026). According to University of Virginia School of Law Prof. Danielle Citron, there are at least 9,500 sites 'devoted to non-consensual intimate imagery.'"

Thus, HB 1681 is necessary to protect the public.

Sincerely,

*Sandy Ma*

AAUW of Hawai'i Public Policy Committee

*The American Association of University Women (AAUW) of Hawai'i is an all-volunteer, statewide chapter of a national organization with close to 4,000 members and supporters across all four counties - Hawai'i, Honolulu, Kaua'i, and Maui. AAUW has state chapters in all 50 states and our mission is to advance gender equity through education and advocacy. Economic security for women is our goal.*



# MOTION PICTURE ASSOCIATION

## House Bill 1681 – Requested Amendment

The Motion Picture Association (MPA) respectfully requests an amendment to HB 1681, a bill to establish the offense of nonconsensual distribution of an intimate image and the distribution of a digitally forged intimate image. MPA is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. Since that time, MPA has advanced the business and art of storytelling, protected the creative and artistic freedoms of storytellers and brought entertainment and inspiration to audiences worldwide. The MPA's members are: Amazon Studios, LLC, Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. Many of MPA's members own news broadcast and cable channels.

HB 1681 will establish a crime for the intentional dissemination of an intimate image of another, when there is no consent and where the person can be identified. In addition, the bill establishes a crime for the intentional dissemination of a digitally forged intimate image of another.

HB 1681 provides two exceptions – for law enforcement acting in the course of a lawful criminal investigation and for a disclosure by the provider of an electronic communication service or remote computing service. The bill, however, overlooks other First Amendment protected speech that should be added to the exemptions: when an image may be newsworthy or otherwise in the public interest. There are situations where images that would be within the scope of this bill would be the subject of news reporting, a documentary or otherwise in the public interest. Examples include: documentaries about the music festival, Woodstock; historical images from the Holocaust and other human rights atrocities. Recognizing the importance of these First Amendment uses, many states have enacted explicit protections for such uses in similar statutes.<sup>1</sup>

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<sup>1</sup> **Cal.** Pen. Code § 647(j)(4)(D) (“It shall not be a violation of this paragraph to distribute an image described in subparagraph (A) if any of the following applies: . . . The distribution is related to a matter of public concern or public interest. Distribution is not a matter of public concern or public interest solely because the depicted individual is a public figure.”); **N.Y.** Civ. Rts. L. § 52-c(4) (“A person is not liable under this section if . . . (ii) the sexually explicit material is a matter of legitimate public concern, a work of political or newsworthy value or similar work, or commentary, criticism or disclosure that is otherwise protected by the constitution of this state or the United States; provided that sexually explicit material shall not be considered of newsworthy value solely because the depicted individual is a public figure.”); **N.H.** Rev. Stat. § 638:26-a(IV) (“This section

For these reasons, MPA respectfully requests the following be added to (5):

*(c) The dissemination or publication of an intimate image which involves a matter of public interest or is newsworthy.*

Thank you for your consideration.

*February 9, 2026*

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shall not apply to . . . Any radio or television broadcasting station or network . . . that publishes, distributes or broadcasts a deepfake . . . as part of a bona fide news report, newscast, news story, news documentary or similar undertaking in which the deepfake is a subject of the report and in which publication, distribution, or broadcast there is contained a clear acknowledgment that there are questions about the authenticity of the materials which are the subject of the report [or] A video, audio or any other media that constitutes satire or parody.”); **La.** Rev. Stat. 14:73.13(C)(1) (“‘Deepfake’ does not include any material that constitutes a work of political, public interest, or newsworthy value, including commentary, criticism, satire, or parody, or that includes content, context, or a clear disclosure visible throughout the duration of the recording that would cause a reasonable person to understand that the audio or visual media is not a record of a real event.”).



FEBRUARY 10, 2026

## HOUSE BILL 1681

CURRENT REFERRAL: JHA

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Kris Coffield,  
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Corey Rosenlee,  
*Director*

Amy Zhao,  
*Policy and Partnerships  
Strategist*

### POSITION: SUPPORT WITH AMENDMENTS

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Imua Alliance supports and suggests amendments for HB 1681, relating to privacy, which establishes the offense of nonconsensual distribution of an intimate image.

Imua Alliance is a Hawai‘i-based organization dedicated to ending sexual exploitation and gender violence. Increasingly, our services are being requested by survivors of image-based sexual abuse (IBSA), a growing problem facilitated by the exponential progression of technology and a key issue in battling modern-day exploitation.

IBSA is widespread. National surveys indicate that approximately 1 in 12 adults in the United States have been victims of nonconsensual image abuse, and 23%—nearly 1 in 4—of young women report being threatened with the distribution of private images according to an analysis performed by researchers from Google and the University of Melbourne. Victims experience elevated rates of depression, anxiety, suicidality, job loss, housing instability, and ongoing stalking and harassment.

Image-based sexual abuse likely impacts millions of people across the nation and thousands of people statewide. A 2017 study by the Cyber Civil Rights Initiative found that approximately 13% of respondents reported being survivors of image-based sexual abuse. Estimates of prevalence rates for image-based sexual abuse are widely believed to be low, however, because of the social stigma, personal shame, and emotional and financial repercussions of reporting such abuse.

As artificial intelligence tools expand, IBSA is rapidly evolving beyond real images to include synthetic or AI-generated images, dramatically lowering the barrier for perpetrators. Recent high-profile controversies—including the misuse of generative AI systems such as Grok and other platforms to create nonconsensual sexualized images of women, public figures, and minors—demonstrate the urgent need for a clear, comprehensive, and survivor-centered statutory framework. As digital transformations continue to

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accelerate, Hawai‘i should seize every opportunity to be a national leader in addressing this form of digital violence.

That said, we respectfully request three targeted amendments to strengthen HB 1681 and ensure legal clarity and survivor-centered enforcement.

**1. Repeal the existing IBSA provisions in HRS §711-1110.9(b) and (c) to avoid duplication.**

Hawai‘i already criminalizes IBSA under HRS §711-1110.9, Violation of Privacy in the First Degree, specifically subsections (b) and (c). These provisions were originally enacted in 2014, and were updated in 2018 to account for threats of nonconsensual image abuse and again in 2021 to include so-called “deep fake” images.

HB 1681 largely replicates the application and intent of these provisions in a new standalone offense. Maintaining two parallel IBSA statutes risks:

- Confusion for law enforcement and prosecutors;
- Inconsistent charging practices and penalties; and
- Legal ambiguity that could undermine enforcement or invite litigation.

Moreover, having two statutes with substantially similar evidentiary requirements risks creating Modica violations (*State v. Modica*, 1977), which occurs when a defendant is charged with a higher grade of offense for conduct that could also be charged under a lower grade of offense (i.e., felony instead of a misdemeanor), and the elements of proof for both are indistinguishable. In cases involving identical evidentiary burdens, prosecutors are required to charge the lower graded offense.

**Recommended amendment:** Repeal subsections (b) and (c) of §711-1110.9 and consolidate IBSA into the new statutory framework created by HB 1681 or incorporate the preferred elements of HB 1681 into §711-1110.9.

**2. Eliminate the distinction between IBSA cases that do and do not require proof of harm on pages 4 and 5, thereby creating a standard penalty that treats all cases of IBSA similarly.**

HB 1681 creates a tiered system in which IBSA that results in harm to reputation, emotional distress, or other specified impacts is treated as a felony, while IBSA without such proof is treated as a misdemeanor.

This structure reintroduces a harmful burden of proof on survivors, who already face significant barriers to reporting. Requiring proof of reputational or emotional harm will discourage reporting and complicate prosecution, and likely lead to most cases being charged at the lower grade of offense because of the heightened evidentiary burden. Notably, §711-1110.9 is graded as a class C felony, which means that inclusion of the distinction between cases

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that can and cannot prove harm could result in most IBSA cases receiving a lower penalty under the new statute than exists today.

A study published in the academic journal *Psychology of Violence* in 2019 found that 73% of survivors of image-based sexual abuse did not turn to anyone for help after discovering the abuse, in part because of legal challenges obtaining pathways to justice for the trauma they endured. Such challenges include proof of harassment clauses, which require evidence of a specific intent to harass, intimidate, or otherwise harm the victim. Proof of harm clauses undermine the purpose of image-based sexual abuse protections by limiting legal cases to those involving retaliatory motives.

According to the Cyber Civil Rights Initiative, only 12% of image-based sexual abuse perpetrators act out of malice, while 88% of incidents are committed for amusement, profit, or other non-retaliatory motives not covered by proof of harm clauses. Thus, as a study published in *American Criminal Law review* asserted, such clauses leave a wide array of perpetrators free to operate with impunity.

**Recommended amendment:** Remove the distinction based on proof of harm and treat all nonconsensual distribution of private images as a felony offense, consistent with current penalties under §711-1110.9.

### **3. Replace the term “intimate” with “private” or “sensitive” throughout the bill to avoid victim-blaming and sexualization.**

The term “intimate” carries historical and cultural connotations that imply consensual sexual activity, which can inadvertently reinforce victim-blaming narratives. Many IBSA cases involve:

- Images taken without consent (e.g., hidden cameras, hacking);
- Images created or altered through AI; and
- Images shared in abusive or coercive contexts.

Framing these images as “intimate” can obscure the core issue: a violation of consent and privacy, not sexual behavior.

**Recommended amendment:** Replace “intimate image” with “private image” or “sensitive image” to emphasize the nonconsensual nature of the act and reduce stigma and shame experienced by survivors.

With aloha,

*Kris Coffield*

President, Imua Alliance

**HB-1681**

Submitted on: 2/8/2026 6:59:33 PM

Testimony for JHA on 2/10/2026 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
M. Leilani DeMello	Individual	Support	Written Testimony Only

Comments:

Aloha,

I KĀKO‘O PIHA this bill. People need protection against this type of behavior and our laws are far behind in that regard. There should also be stronger consequences for those who are tricking youth into sending nude photos to then turn around and blackmail them. That can and has ended up with lost lives.

Mahalo,

M. Leilani DeMello

‘Ōla‘a, Puna, Hawai‘i

## **TESTIMONY IN SUPPORT WITH AMENDMENTS**

### **HOUSE BILL 1681**

**February 9, 2026**

**Current Referral: JHA**

Aloha Chair Tarnas Vice Chair Poepoe, and Members of the Committee,

My name is Amy Zhao, and I am submitting testimony in strong support of HB 1681, with amendments, as a student who has witnessed how common image-based sexual abuse is among my peers, and as someone who has personally experienced image-based sexual abuse.

Among young people, nonconsensual distribution of private sexual images is not rare or hypothetical. I have seen how a single image can cause someone to permanently remove themselves from friend groups, stop coming to school, and feel ashamed for simply existing online. Survivors often carry the consequences in silence while the person who shared the image moves on.

Because I have lived and witnessed this reality, I strongly believe Hawai‘i must strengthen the law so victims can actually access justice. Survivors already face barriers to reporting, including fear, stigma, and the emotional toll of losing control over our privacy. The law should not add another barrier by requiring victims to prove “harm” before the offense is taken seriously.

I support amendments to remove proof of harm so survivors do not have to clear an extra evidentiary hurdle to seek accountability. Imua Alliance explains that HB 1681 currently creates a tiered system—treating cases with proof of reputational or emotional harm as a felony, while treating cases without that proof as a misdemeanor—and warns that this structure reintroduces a harmful burden on survivors and will discourage reporting. Imua Alliance recommends eliminating this distinction and treating all IBSA cases similarly. I also support the recommended amendment to replace the term “intimate” with “private” or “sensitive” image to reduce stigma and keep the focus on consent and privacy rather than sexualization or victim-blaming.

For these reasons, I respectfully urge you to pass HB 1681 with amendments, including removing proof-of-harm requirements so survivors like me, and many more who are suffering quietly, can seek justice without being forced to “prove” the impact of a violation that is inherently harmful.

Mahalo for your time and your commitment to protecting our community.

Sincerely,  
Amy Zhao



Dennis M. Dunn  
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TO: **Representative David A. Tarnas, Chair**

**Representative Mahina Poepoe, Vice Chair**

**House Committee on Judiciary and Hawai'ian Affairs**

RE: **H.B. 1681 Relating to Privacy**

HEARING: **Tuesday, February 10, 2026, 2:00 p.m.**

**Conference Room 325**

Good afternoon, Chair Tarnas and Vice Chair Poepoe, and Members of the House Committee on Judiciary and Hawai'ian Affairs. I am providing testimony in **Support of H.B. 1681, with amendments**. This Bill proposes to create the offense of Nonconsensual Distribution of an Intimate Image, presumably designed to stem the growing problem of individuals who distribute intimate images of other persons without the consent of the individual depicted in the images.

My comments and suggestions regarding H.B 1681 are drawn from my nearly 50 years of experience as an advocate for crime victims, forty-four of which were as an employee of the Honolulu Prosecuting Attorney's Office, serving as Director of the Victim Witness Kokua Services from 1985 to 2022. During my tenure with the Prosecutor's Office, I was privileged to work with many survivors of a variety of sexual offenses. In addition to my advocacy role with these survivors, I have been honored to serve as the handler for Pono and Clover, courthouse facility dogs who provide comfort and support to crime victims during interviews and court proceedings. In my capacity as a handler, I have listened to numerous hours of victims' stories of the betrayal of trust of a friend or acquaintance who distributes intimate images of them without their permission. Like other sexually based offenses, the intense trauma caused by a victim's experience is heightened by the betrayal of the relationship and the knowledge that electronic images of this nature may last forever throughout the vast reaches of the internet. Shame, embarrassment, and fear are common emotions experienced by these victims due to these acts, which frequently last for many years, if not a lifetime.

An offense commensurate with the seriousness of the impacts described above seems appropriate and is what H.B. 1681 endeavors to do. While I support this measure, I urge the Committee to address several issues that I have identified in the Bill. The first is a lack of clarity on the state of mind intended in the language of the Bill. It is unclear whether the drafters wanted to require proof of intentional conduct or is recklessness

what is contemplated. There are merits to both approaches but the lack of clarity in the Bill as it stands could doom it upon appellate review. Keep in mind that reckless conduct as defined in the Hawai'i Penal Code does connote knowledge of the nature of your conduct as well as an awareness of the potential impact of your actions. Another approach that you may want to consider could be a graded offense with separate states of mind for various levels of the offense.

A second area of concern is a lack of consistency in the terminology used to describe the actions describing the offense. A single term is preferable both for clarity and to avoid vagueness that could create a level of constitutional uncertainty that could open the new statute to legal challenges. Establishing consistent definitions is also important and placement of the definition in the definition section for H.R.S. Chapter 711 seems appropriate.

Finally, the Committee may want to consider whether overlaps between the newly proposed offense and the existing Violation of Privacy offense in H.R.S. Section 711-1110.9, subsections (b) and (c) create any constitutional infirmity relative to *State v Modica*. While a *Modica* problem seems unlikely to me I do think that maintaining two similar offenses may create confusion among law enforcement and prosecutors as to which section to cite when charging an individual under both the new and existing statutes.

I strongly urge the members of this Committee to support H.B 1681, with the suggested amendments or clarifications described above, as both a significant deterrent to the nonconsensual distribution of intimate images and the establishment of appropriate consequences for this type of behavior in our state. Thank you for your time and consideration.