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**HB18-1264: MEASURES TO CLARIFY THE SCOPE OF REVENGE PORN**  
**Sponsors: Jackson/Carver/Cooke/Fields**

**I. Background**

Revenge porn is the distribution of nude or sexually explicit images of individuals without their consent. Colorado first criminalized revenge porn in 2014. However, Colorado's revenge porn statute is in need of an update in order to close significant loopholes that leave victims vulnerable.

**II. Makes 3 Changes to the Existing Revenge Porn Statute**

- A. The current revenge porn law only covers disclosure of images that depict nudity. However, many images do not depict nudity of the victim, but may still depict a sex act that will be equally detrimental to the victim if disclosed to the public. This bill will ensure that images depicting *both* nudity and sex acts are covered by the Colorado's revenge porn law.
- B. Removes the requirement that the defendant specifically intend to inflict serious emotional distress on the victim. Rather, it requires that the Defendant specifically intend to harass, intimidate, threaten or coerce. However, the element of the crime which requires that serious emotional distress actually result from the posting of the image remains in the law, i.e. someone cannot be found guilty of revenge porn if posting the image did not actually result in serious emotional distress to the victim.
- C. Removes the exception for "newsworthy" images. The majority of other states do not have newsworthy exceptions. The fact that the person who commits the crime must have specifically intended to harass the victim makes this exception unnecessary. The current exception in the law is a gigantic loophole in that it allows harassment, as long as it's for a "newsworthy purpose" which can encompass almost anything.

### **III. We must better protect victims of revenge porn**

Victims in the following situations are not protected under current law, but will be protected under the new revenge porn law:

- A woman whose partner distributes an explicit image depicting the victim performing oral sex, but that does not display any of the woman's nude parts.
- A victim of domestic violence whose abuser distributes images without her consent and with the intent to coerce her into an ongoing sexual relationship.
- A public employee whose ex-boyfriend releases nude or sexually explicit images with the intent to harass, claiming that it's newsworthy due to her public employment and therefore exempt under the "newsworthy exception" in the current law.

### **IV. First Amendment Issues**

The bill's language is careful to limit its scope to private images and situations where the person disclosing the images acts with the specific intent to harass, intimidate, threaten, or coerce the victim. At least 15 other states have enacted revenge porn laws that require the specific intent to harass.

Removing the newsworthy exception does not change the fact that if someone is disclosing an image for a newsworthy purpose he/she would lack the requisite specific intent to harass, intimidate, threaten, or coerce the victim and would therefore not be committing a crime.

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<sup>1</sup> Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 *Wake Forest L. Rev.* 345, 351 (2014).