23RD NAVAJO NATION COUNCIL
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Revenge Porn Act approved by Navajo Nation Council

Photo: Council Delegate Jonathan Hale worked with members from Naabik'íyáti' Sexual Assault Prevention Subcommittee to develop policy to combat revenge porn. (Left to right: Council Delegates Otto Tso, vice chair Jonathan Perry, chair Amber Kanazbah Crotty, Jonathan Hale, Steven Begay, and Dwight Witherspoon.)

WINDOW ROCK – The 23rd Navajo Nation Council considered Legislation No. 0428-17 on the fourth day of the 2018 Spring Council Session, seeking to enact a Revenge Porn Act while amending other sexual offenses within the Navajo Nation Criminal Code Title 17. Currently, 38 states and the District of Columbia have enacted revenge porn laws.

The legislation defines "revenge porn" as "sexually explicit images of a person posted online without that person's consent, especially as a form of revenge of harassment." Images are defined as photographs, video, film, or digital recording, and online dissemination defined as

delivery through an electronic mail address, mobile device, tablet, or other electronic communication device.

Council Delegate Jonathan Hale (Oak Springs, St. Michaels), chair for the Health, Education, and Human Services Committee, informed Council members that in this day in age, individuals are utilizing social media and the internet to harass, intimidate, and exploit former intimate partners in an act of revenge to hurt and cause injury to their victim.

"This is a form of cyberbullying, and it also can be a way to entrap someone and force them into sex trafficking. This strengthens the laws and allows justice for the victims. They may share personal information with someone they trust, but that doesn't mean it should be disseminated if they should have a falling-out. Also, sometimes the victims are underage and can affect minors, and leads to sexual exploitation. So we have to put those protections in there for them as well," said Delegate Hale.

Delegate Hale added that the issue of revenge porn arose from reports presented to the Naabik'íyáti' Sexual Assault Prevention Subcommittee by Navajo citizens who were victimized online by former partners, and said the issue is widespread across the Navajo Nation.

Council Delegate Leonard Tsosie (Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, Whitehorse Lake) raised jurisdictional concerns regarding tracking online revenge porn activity on and off the Navajo Nation, and questioned how prosecution would take place once a suspect has been identified.

"I realize that the way we are doing this law will only be limited within the territorial boundaries of the Navajo Nation. A lot of these servers are outside our Nation, and a good example is Facebook. Through the use of their product, harm to the Navajo people occurs. What I am trying to say is that we can pass all the laws we want, but it becomes 'toothless,'" said Delegate Tsosie.

Delegate Tsosie said federal and state law enforcement agencies utilize online tracking mechanisms through computer IP addresses and recommended that the Navajo Nation Police Department and Criminal Investigations create a special unit to address revenge porn and cyberbullying crimes.

Chair for the SAP Subcommittee, Council Delegate Amber Kanazbah Crotty (Beclabito, Cove, Gadi'i'áhi/To'Koi, Red Valley, Tooh Haltsooi, Toadlena/Two Grey Hills, Tsé ałnáoz't'l'í), commended Delegate Hale for aiding the Subcommittee in combatting sexual violence, and said revenge porn is enough to be considered a tier-one sex offense.

"We know that in our Subcommittee we heard from personal testimonies of how this affected our people. I didn't realize that this was not a tier-one sex offense. I have concerns with that language and will work on what is the proper sexual offense for this type of activity so convicted individuals are required to register as a sex offender. In the mean time, I would like to ensure that the perpetrators receive the maximum penalty," said Delegate Crotty.

Delegate Crotty added that revenge porn is a type of victimization that can cause irreversible trauma for victims, and motioned for an amendment to strengthen penalties against offenders by increasing jail time to 365 days, be ordered to pay a $5,000 fine, or both.

Council members voted 18-0 to approve the amendment.

Speaking in support of the legislation, Council Delegate Walter Phelps (Cameron, Coalmine Canyon, Leupp, Tolani Lake, Tsidi Tó'ii) called for amendments to the law to clarify jurisdiction and the prosecutorial processes to continue protecting victims.

"Whatever the crime is, we want to send a message that they will be prosecuted. We will use the court system to help our children and [protect the most vulnerable]. I feel like this is a basic right that we have to step in and intervene as leaders, and our laws should reflect that," said Delegate Phelps.

At the conclusion of the discussion, Council members voted 17-0 to approve Legislation No. 0428-17. President Begaye will have 10 calendar days to consider the resolution once it is delivered to the Office of the President and Vice President.

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