

Case of slain Utah athlete Lauren McCluskey prompts new revenge porn bill

Utah lawmaker wants to allow charges to be brought in cases even after victims have died

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<https://www.deseret.com/utah/2021/2/1/22260458/revenge-porn-bill-allows-charges-after-death-lauren-mccluskey-university-of-utah-police>

SALT LAKE CITY — Shock waves from the death of University of Utah student [Lauren McCluskey](#) and its aftermath continue to be felt as one lawmaker is proposing a bill to change the state's revenge porn law. More than two years ago, McCluskey shared intimate photos with a university police officer to aid in the investigation of her eventual killer, Melvin Shawn Rowland, 37, who was blackmailing her with the photos. A review [conducted by the Utah Department of Public Safety](#) found that officer [accessed them multiple times and showed them to others](#) on his phone on at least four occasions.

"This was outside the scope of his employment, it was not within the scope of the investigation, it was just: 'Hey, look at this,'" [HB147](#) sponsor Rep. Craig Hall, R-West Valley City, told members of the House Judiciary Committee on Monday.

Despite public outcry, Utah laws provided no avenue to prosecute the officer. The state's revenge porn law requires victims to suffer emotional distress for charges to be filed, which couldn't occur because McCluskey had died, Hall noted.

"We don't want death to be a bar to prosecution if the death happens before the distribution (of images). And the second item that has come to my mind over the last few days is that we don't require a sexual assault victim to testify about actual emotional distress," Hall said.

"So if someone is sexually assaulted, if someone is raped, we don't require the witness to get on the stand and testify as to whether this caused actual emotional distress," he said.

[HB147](#) seeks to bridge that gap in the law, Hall said.

Originally written to remove the requirement that distress or harm be shown for charges to be filed, Hall also introduced an alternate version that would only remove the distress requirement in cases where the subject is deceased or incapacitated. Hall acknowledged that should the substitute bill run, it would only impact a small fraction of cases.

The committee debated which version of the bill to support on Monday, with some favoring the original bill but some fearing it could lead to prosecution of those who don't intend to cause harm.

Rep. Nelson Abbot, R-Orem, said he is concerned that requiring all victims of revenge porn to show proof they've been harmed revictimizes them as they testify of their emotional stress.

"I will vote for the bill, but I do have concerns that we are differentially treating victims — the victim who is lucky enough to survive an assault or an attack is now required to prove their emotional state to a court, whereas the person, the victim, who is incapacitated does not have to prove. And what does that say about the law?" Rep. Karianne Lisonbee, R-Syracuse, asked.

"I will vote for the bill because I do think it moves us in the right direction," Lisonbee said.

But Rep. Kera Birkeland, R-Morgan, said that sometimes in such cases "we look at women as being too fragile to stand up for justice. And I think there is a benefit to them coming forward with support, but coming forward and standing up for what happened to them and why it shouldn't happen again."

"I don't see it as a concern. As a woman, I see it as something we can do to maybe strengthen others," she said.

When the meeting opened for public comment, Nicholeen Peck, president of Worldwide Organization for Women, said the organization prefers to remove the emotional distress requirement for all victims.

"And to say if anyone is trying to sexually exploit another person without their permission, we absolutely have to make a line that that's not OK to do so," Peck said.

Pam Vickrey, executive director of Utah Juvenile Defender Attorneys, said she worries that if the original bill passes, “you could potentially have a situation where you don’t need a victim to be there to testify.” Ryan Holtan, prosecutor with the Utah Attorney General’s Office, said the office supports removing the harm or emotional distress requirement from the law. The nonconsensual sharing of an image is wrong regardless of its impact on the victim, Holtan said.

“The requirement of an emotional distress or harm element simply gives a pass or a potential pass to a perpetrator based on their choice of a victim who they target,” Holtan said.

Theft doesn’t become more or less of a crime based on how well the victim is doing afterward, he noted.

The statute would still require some manner of proof that the perpetrator knew or should’ve known that sharing the image would cause a person distress or emotional harm, according to Holtan.

Holtan said the original bill would protect victims who don’t immediately experience distress or harm due to the sharing of intimate images. They could testify it didn’t cause them harm “only to suffer years later as that image comes back to impact their life.”

The original draft of the bill “does a lot more good for a lot more people,” Holtan said.

Marina Lowe, legislative and policy council with ACLU of Utah, said she fears that removing the emotional distress requirement would make criminals of people who aren’t necessarily involved in revenge or in sharing of porn without a person’s consent.

For example, after a date, a man could send an unsolicited intimate photo to a woman, who then passes it along to a friend and says, “Can you believe this guy?”

Lowe said the bill could criminalize that woman, and she doesn’t want more people swept into the statute due to unintended behavior.

The committee voted unanimously to support the substitute version of the bill, which removes the emotional distress requirement only for deceased or incapacitated victims. It will move to the full House for consideration.