



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 3040, RELATING TO PUBLIC SAFETY.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 12, 2008 **TIME:** 2:05 PM

LOCATION: State Capitol Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Waters and Members of the Committee:

The Attorney General strongly supports this bill.

The purpose of this bill is:

- to amend chapter 846E, Hawaii Revised Statutes (HRS), Hawaii's sex offender registration laws, to comply with parts of Title I of the Adam Walsh Child Protection and Safety Act of 2006;
- to create the offense of electronic enticement of a child in the third degree to adequately address instances of electronic enticement of children where a predator attempts to lure or solicit a minor or arrange a meeting with a minor over the Internet with intent to commit a sex offense or crime against minors, but where the predator does not attend the arranged meeting;
- to create the offense of indecent electronic display to a child to address a specific form of grooming conduct by child predators involving masturbation or the lewd or lascivious exposure of the predator's genitals over the computer for view by a minor;
- to update the repeat offender sentencing law to include the offense of failure to comply with covered offender registration requirements and the new offense of indecent electronic display to a child;
- to address instances of possession of particularly violent or egregious child pornography;

- to clarify the element of electronic enticement of a child in the first degree regarding the intent to promote or facilitate the commission of another crime; and
- to provide greater protection for our children by adding mandatory sentencing provisions for the offenses of promoting child abuse in the second and third degrees and electronic enticement of a child in the first degree.

Title I of the Adam Walsh Child Protection and Safety Act of 2006 is the Sex Offender Registration and Notification Act (SORNA). In declaring the purpose of the Act, Congress stated, "In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators . . . Congress in this Act establishes a comprehensive national system for the registration of those offenders."

Prior to 2006, all states had adopted their own independent sex offender registration systems in response to the Jacob Wetterling Act in 1994 and subsequent amending legislation. The proposed May 2007 national SORNA guidelines state, "Ultimately, Congress concluded that the patchwork of standards that resulted from piecemeal amendments should be replaced with a comprehensive new set of standards—the SORNA reforms . . . that would close potential gaps and loopholes under the old law, and generally strengthen the nationwide network of sex offender registration and notification programs."

SORNA was in response to a number of high profile violent crimes committed by individuals who had previously been convicted of sex crimes but under the old standards were not required to register as sex offenders. Under SORNA, the predecessor sex offender program was repealed. SORNA established new baseline sex offender registry standards for state registries.

States that do not substantially comply with the new SORNA provisions by July 27, 2009, will not receive ten percent of the federal Byrne Justice Assistance Grant funds that would otherwise be allocated annually to the states. The potential loss of ten percent

of federal Byrne Justice Assistance Grant funds should not be a factor in decisions about compliance with SORNA provisions. The issues of substantial compliance with SORNA and funding penalties remain uncertain. And regardless of SORNA, the amount of grant funds allocated to the states is being reduced significantly. Furthermore, certain issues raised by the SORNA requirements are far more important to Hawaii than the amount of money at stake.

While the funding penalty provision is intended to strongly encourage nationwide compliance, the real motivation for states to comply with SORNA is the opportunity to participate in the development of a comprehensive nationwide network of state registries that work together to effectively share information to support public safety efforts and protect our citizens, particularly our children. Because SORNA did not create a federal sex offender registry, the development of a comprehensive and effective nationwide network of state registries is critical to keeping track of sex offenders in our communities, especially those offenders who travel between jurisdictions.

While this bill does not provide for substantial compliance with all of the SORNA requirements, it does provide for sufficient compliance with the new SORNA baseline standards to enable the Hawaii sex offender registry to be an effective participant in the comprehensive nationwide network of state registries.

This bill complies with SORNA requirements as follows:

- (1) Adding a few offenses to the list of covered offenses subject to registration in an effort to include all of the Hawaii offenses that are comparable to the covered offenses required by SORNA (see section 8, starting at page 17).
- (2) Placing the Hawaii offenses into three tiers that are consistent with the three SORNA tiers. While Hawaii law requires lifetime registration, this bill allows offenders to petition for removal from the registry after fifteen years of compliance as a tier I offender and twenty-five years of compliance as a tier II offender to meet the duration requirements under SORNA. It should be noted,

however, that tier III offenders, contrary to SORNA's lifetime registration requirement, are being allowed to petition to get off the registry after forty years.

- (3) Expanding the scope of information that offenders must provide to include, among other items, e-mail addresses and other Internet and instant message names and addresses, cell phone numbers, names and addresses of places where the offender works as a volunteer, professional licenses, vehicle information, and passport information.
- (4) Expanding the scope of information in the registry to include a current photograph and physical description of the offender, a copy of the covered offense judgments, the text of the law defining the offender's covered offenses, the offender's criminal history, confirmation that the offender has provided a DNA buccal swab sample and fingerprints, a digitized copy of or link to the offender's drivers license or identification card and the offender's passport or other immigration documents.
- (5) Expanding the scope of information disseminated to the public to include, among other items, nicknames, year of birth, physical description including identifying characteristics such as scars or tattoos, temporary addresses used by the offender, names and addresses of places where the offender works as a volunteer, professional licenses, public criminal conviction history, a copy of the covered offense judgments, and the text of the law defining the offender's covered offenses.
- (6) Providing for the development of a community notification system that would allow the public to request and obtain notifications about covered offenders.

Additionally, this bill will eliminate the provision that gives the public only on-site access, rather than Internet access, to information regarding offenders with a single class C covered offense.

This bill does not provide for compliance with the following significant SORNA requirements:

- (1) Registration of juveniles, fourteen years or older, who have been adjudicated of committing aggravated sexual abuse crimes.

- (2) Lifetime registration of SORNA tier III offenders without any possibility of removal from the registry.
- (3) In-person verification of registration information by offenders every three months for tier III offenders and every six months for tier II offenders. Instead, this bill requires all offenders to report to police for in-person verification of registration information once each year. This annual reporting provision is delayed for one year to allow the police time to prepare for the increased workload. The bill also allows the Attorney General, through rulemaking, to designate additional agencies to assist the police in this effort.
- (4) In-person updates for any changes to significant registration information.
- (5) Public web access to the registration information for the entire time that the offender is subject to the registration requirements.

The sex offender registration and notification programs serve a number of purposes. The programs provide systems for tracking sex offenders released into our communities. In the event of a violent sex crime, the programs provide law enforcement with information on sex offenders in the area the crime was committed. The information may help law enforcement identify the perpetrator, and may help law enforcement to quickly locate and apprehend the perpetrator. The programs may also deter released offenders from committing other crimes because they require offenders to maintain contact with authorities and provide detailed information regarding their whereabouts. The public notification aspects of the programs allow members of the public access to information on sex offenders in their area, thereby enabling them to take reasonable measures to protect themselves.

This bill also includes provisions to strengthen our laws regarding the electronic enticement of children. Predators meet children over the Internet and entice the children to engage in sexual offenses. Grooming the children is a key aspect of this predatory behavior. It usually involves conduct to gain the

children's trust, develop the relationship, make the children feel comfortable with the offender and the idea of engaging in sexual acts, and ultimately make the children more willing to engage in sexual acts with the offender.

Current laws only prohibit conduct that includes arranging a meeting with the child and actually traveling to the agreed upon meeting place. This bill amends the offense of electronic enticement in the second degree to only require the agreement to meet. Sometimes, actual travel to the meeting place may not take place because the offender realizes he is being watched or followed by law enforcement, or unrelated circumstances, perhaps related to transportation difficulties, may prevent his arrival at the meeting place. In such situations, where the offender has identified his victim over the Internet and developed the relationship to the point where he has arranged a meeting with the child to engage in a sexual offense, the conduct should still be prohibited.

This bill also creates the misdemeanor offense of electronic enticement of a child in the third degree to prohibit the use of a computer to solicit, lure, or entice a child to engage in sexual conduct with intent to facilitate the commission of a sexual offense. The conduct prohibited in this offense focuses on the grooming activity. Although the offense does not require a meeting, it still requires the prosecution to prove that the offender engaged in the conduct with intent to facilitate the commission of a sexual offense.

This bill also creates the class C felony offense of indecent electronic display to a child. This offense targets a specific form of grooming conduct that is frequently encountered by law enforcement officers posing as children over the Internet. During the course of Internet communications with a child, an offender may use a camera to transmit images of him masturbating or exposing his genitals in a lewd or lascivious manner as part of a scheme to

desensitize the child to sexual activity and entice the child into engaging in sexual conduct.

This bill updates the repeat offender sentencing law to include the offense of failure to comply with covered offender registration requirements and the new offense of indecent electronic display to a child. The registration offense is a felony that involves offenders who are only subject to the registration requirements because they previously committed a sexual offense or an offense against minors as defined in chapter 846E. For the sex offender registration program to work effectively and achieve its purposes as described earlier, the covered offenders must comply with the registration laws, and compliance can only be achieved if the registration laws are taken seriously. Including the registration offense in the repeat offender law will confirm the importance of the registration program and the seriousness of the offense.

The offense of indecent electronic display to a child is added to the repeat offender law in an effort to provide greater protection to children from these dangerous predators. It is also consistent with the existing repeat offender law, which already includes the offenses of electronic enticement of a child in the first and second degrees.

In another effort to provide greater protection to children in this age of electronic communication and sharing of digital information, this bill amends the offense of promoting child abuse in the second degree to include the possession of particularly violent or egregious child pornography that involves a child under the age of twelve, sadomasochistic abuse of a minor, sexual penetration of a minor, or bestiality involving a minor.

And finally, to provide greater protection for our children, this bill adds mandatory sentencing provisions for serious child abuse and electronic enticement offenses. These provisions focus on offenses involving the dissemination or possession of child pornography and the electronic enticement of a child that results in

the offender actually traveling to meet with the child to engage in a sexual offense.

We respectfully request passage of this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

February 12, 2008

RE: H.B. 3040; RELATING TO PUBLIC SAFETY.

Chair Waters and members of the House Judiciary Committee, the Department of the Prosecuting Attorney submits the following testimony in strong support of House Bill 3040.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) chapter 846E to improve Hawaii's sex offender registration law so that it can effectively participate in the national network of sex offender registries. In addition, the proposed amendments to HRS chapter 846E will bring Hawaii closer in compliance with Title I of the Adam Walsh Child Protection and Safety Act of 2006 (also known as the Sex Offender Registration and Notification Act or SORNA). The bill also proposes new laws regarding electronic enticement of a child and indecent electronic display to a child. H.B. 3040 also proposes mandatory minimum terms of imprisonment for the offenses of promoting child abuse in the second and third degrees; it also amends the offense of promoting child abuse in the second degree to include some circumstances where a person has ten or more images of child pornography that contain minors under twelve or certain types of conduct. Finally, H.B. 3040 amends the penalties for electronic enticement of a child in the first degree to eliminate the possibility of probation.

With the wide-spread use and acceptance of the internet and computers as tools for social networking and the anonymity it appears to provide, children and teens are at a greater risk for victimization by persons who seek out minors for sexual purposes. One report, The Teen Internet Safety Study found that 71% of the teens surveyed reported that they had received messages online from someone they don't know. Forty-five percent of the teens had been asked for personal information by someone they don't know. Thirty percent of the teens have considered meeting someone they've only talked to online. And fourteen percent have actually met a person face-to-face they've only spoken to over the Internet.

Given the extensive use of the Internet by minors and its acceptance as a social networking tool, it is not surprising that it has also been misused by people who seek to sexually exploit minors. The Online Victimization of Youth report done in 2006 found that four percent of the youth Internet users surveyed said that they had been solicited online for a nude or sexually explicit photograph of themselves. And four percent of the minors reported being aggressively solicited by persons who attempted to make offline contact with them.

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For this reason, we strongly support the stronger sentencing for electronic enticement and promoting child abuse, as well as the creation of new laws on electronic enticement and indecent electronic display to a child. We also strongly support the proposed amendments which would allow Hawaii to participate in the national network of sex offender registries, as such participation would allow a more comprehensive and seamless flow of information to the public. We respectfully ask for your favorable consideration of H.B. 3040 and ask that you pass H.B. 3040 out.

Thank you for this opportunity to testify.

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Harry Kim
Mayor



Lawrence K. Mahuna
Police Chief

Harry S. Kubojiri
Deputy Police Chief

County of Hawaii

POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawaii 96720-3998
(808) 935-3311 • Fax (808) 961-8865

February 9, 2008

Representative Tommy Waters
Chairperson and Members
Committee on Judiciary
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Representative Waters and Members:

Re: House Bill 3040, Relating to Public Safety

The Hawai'i Police Department supports the passage of House Bill 3040, Relating to Public Safety, which seeks to revamp Hawai'i's sex offender registry laws so as to provide more up-to-date and more useful information about registered sex offenders to the public. Furthermore, this measure seeks to strengthen some criminal laws relating to electronic enticement of a child; and makes other viable criminal law changes.

As cited by the Department of the Attorney General, this bill strengthens sex offender registration laws to comply with parts of Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA).

Additionally, the language changes in this measure add mandatory sentencing provisions for serious child abuse and electronic enticement offenses; focuses on offenses involving the dissemination or possession of child pornography and electronic enticement where the offender travels to meet with a child to engage in a sexual offense. This bill also addresses possession of particularly violent or egregious child pornography that involves a child under the age of twelve, sadomasochistic abuse of a minor, sexual penetration of a minor, or bestiality involving a minor.

In this age of electronic communication and digital information sharing, this bill strengthens the laws to protect our children more adequately; and reinforces the prime governmental interest to protect the public, especially our children from sex offenders; therefore, I urge this committee to support this legislation.

Thank you for allowing the Hawai'i Police Department to testify on House Bill 3040.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence K. Mahuna", written over a large, loopy oval scribble.

LAWRENCE K. MAHUNA
POLICE CHIEF

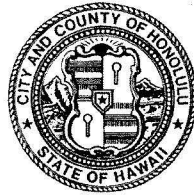
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POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
MICHAEL D. TUCKER
DEPUTY CHIEFS

OUR REFERENCE JC-NTK

February 12, 2008

The Honorable Tommy Waters, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

Subject: House Bill No. 3040, Relating to Public Safety

I am Janet Crotteau, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 3040, Relating to Public Safety.

Passage of this bill will strengthen the laws protecting children and will revamp the sex offender registration laws.

Under the section, Electronic enticement of a child in the first degree, it removes the condition of one year of imprisonment is removed and instead provides for the possibility of an open ten-year term of imprisonment. In the second degree, the need to meet with the child is removed, thereby making it unlawful to plan a meeting. By creating Electronic enticement in the third degree, the bill addresses "grooming" behavior. Predators use the Internet to gain a child's trust, which results in the child's willingness to meet with his or her computer friends. This makes preparing a child for the meeting a misdemeanor offense.

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The Honorable Tommy Waters, Chair
and Members

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Further, this bill creates the offense of Indecent electronic display to a child which involves grooming behavior. This desensitizes a child to view sexual conduct and entices the child into sexual activity.

In addition, possessing ten or more images of any form of child pornography of a minor under age twelve, any sadomasochistic abuse of a minor, sexual penetration of a minor or bestiality involving a minor were added to the offense of Promoting child abuse in the second degree.

However, the majority of this bill amends section 846E, Hawaii Revised Statutes, Hawaii's sex offender registration laws, to comply with parts of Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA). This bill addresses the nation's patchwork of amendments and replaces it with a comprehensive new set of standards, the SORNA reforms.

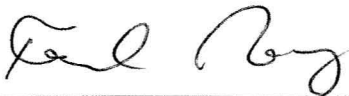
Thank you for the opportunity to testify.

Sincerely,



JANET CROTTEAU, Captain
Criminal Investigation Division

APPROVED:



for
BOISSE P. CORREA
Chief of Police

000049



POLICE DEPARTMENT
COUNTY OF MAUI



CHARMAINE TAVARES
MAYOR

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(808) 244-6400
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THOMAS M. PHILLIPS
CHIEF OF POLICE

GARY A. YABUTA
DEPUTY CHIEF OF POLICE

OUR REFERENCE
YOUR REFERENCE

February 11, 2008

The Honorable Tommy Waters, Chair
And Members of the
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

SUBJECT: House Bill No. 3040, Relating to Public Safety

I am Thomas M. Phillips, Chief of Police of the Maui County Police Department and a member of the Hawaii Law Enforcement Coalition. We are supporting House Bill No. 3040, Relating to Public Safety.

The purpose of this bill is to strengthen sex offender registration laws to comply with parts of Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA). This bill also adds mandatory sentencing provisions for serious child abuse and electronic enticement offenses.

This bill provides that all public information with regard to sex offender registration will be available on the internet, thus citizens will no longer be required to travel to police stations or the Hawaii Criminal Justice Date Center to access information on some offenders. Registration information will be significantly expanded to include: email addresses, instant messaging information, cellular phone numbers, and vehicle registration. Starting in 2009, offenders will be required to report to authorities in person, to update information and have a new picture taken every year instead of every five years.

Defendants found guilty of Electronic Enticement of a Child in the First Degree will no longer be able to receive a sentence of probation. This bill will also amend the offense of Electronic Enticement in the Second Degree and require only the agreement to meet. This will ensure that the predator may be brought to justice, even if he does not actually arrive at the meeting place. This bill also creates a misdemeanor, which focuses on predator's "grooming" activities. The offense of Electronic Enticement of a Child in

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And Members of the
Committee on Judiciary
February 11, 2008
Page 2

the Third Degree prohibits the use of a computer to solicit, lure, or entice a child to engage in sexual conduct with intent to facilitate the commission of a sexual offense.

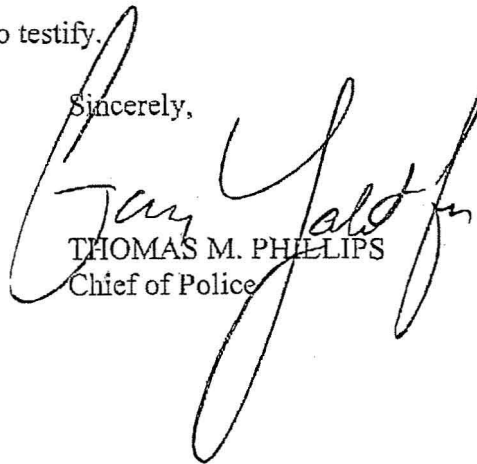
This bill also creates a class C felony offense of Indecent Electronic Display to a Child, which targets specific grooming activities. In internet communications with children (or law enforcement officers posing as children), predators often transmit images of themselves masturbating or exposing their genitals in a lewd or lascivious manner as part of a scheme to entice children to engage in sexual conduct. Finally, this bill updates the repeat offender sentencing law to include the failure to comply with sex offender registration requirements.

The Police and Prosecutors in the State of Hawaii require these amendments and new statutes to further the fight against these predators which use computers to condition, groom, and desensitize, and finally, sexually assault our children.

The Maui County Police Department respectfully urges you to support the passage of House Bill No. 3040, Relating to Public Safety.

Thank you for the opportunity to testify.

Sincerely,



THOMAS M. PHILLIPS
Chief of Police

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A JOINT LEGISLATIVE EFFORT

E-Mail to: JUDtestimony@Capitol.hawaii.gov
Regarding: House JUD hearing
Hearing: February 12, 2008 @ 2:05 p.m. in room 325

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Date: February 11, 2008
To: House Committee Judiciary
The Honorable Tommy Waters, Chair
The Honorable Blake Oshiro, Vice Chair
From: Kelly M. Rosati, JD
Executive Director, Hawaii Family Forum
Lobbyist, Roman Catholic Church in the State of Hawaii
Re: Strong Support for HB 3040 Relating to Public Safety

Honorable Chair and members of the House Committee on Judiciary, I am Kelly Rosati, representing both the Hawaii Family Forum and the Roman Catholic Church in the State of Hawaii. Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in Hawaii, which under the leadership of Bishop Larry Silva, represents over 210,000 Catholics in Hawaii.

Our organizations have been strong advocates over the years of providing information to parents so that they can better protect their children from sex offenders and predators on the internet. We are very grateful for the leadership of Hawaii's Attorney General and this Legislature in passage of both Megan's law and the electronic enticement law.

A cursory reading of local newspapers regularly demonstrates the ways in which these laws are being used as effective tools in combating sexual exploitation and in holding perpetrators accountable.

We support HB 3040 because it will modify Hawaii's sex offender registry laws to provide more current and helpful information regarding convicted, registered sex offenders who may pose a risk to the community. We also support the strengthening of the electronic enticement and other provisions to better combat predators on the virtually unrestrained venue of the internet.

HB 3040 addresses Hawaii's obligation to comply with the federal Adam Walsh Child Protection and Safety Act, also known as the Sex Offender Registration and Notification Act (SORNA). We defer to law enforcement and other criminal law experts on the most specific details of the measure but urge your strong support of moving in the direction of greater protection for Hawaii's children.

Mahalo for your kind consideration. We urge your strong support of HB 3040.

JUDtestimony

From: Jeannine Johnson [REDACTED]
Sent: Sunday, February 10, 2008 6:16 PM
To: JUDtestimony
Cc: Rep. Barbara Marumoto; Rep. Lyla B. Berg; Rep. Gene Ward; Sen. Fred Hemmings; Sen. Sam Slom; Dana.Viola@hawaii.gov
Subject: Testimony in Strong Support of HB3040 (sex offenders), HB3041 (murderers), HB2558,HD1 (child abuse/neglect) and HB2999 (gun safety devices)

COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair

HB 3040 RELATING TO PUBLIC SAFETY
HB 3041 RELATING TO CRIME
HB 2558, HD1 RELATING TO CHILD PROTECTION
HB 2999 RELATING TO FIREARMS

DATE: Tuesday, February 12th, 2008
TIME: 2:05pm
PLACE: Conference Room 325

Aloha Chair Waters and Vice Chair Oshiro,

Mahalo for providing a hearing on these vital bills.

I wholly support each of the above-stated bills which strengthen our criminal laws and protect our most precious treasures, our keiki.

Mahalo for your support of each of these excellent bills.

Jeannine
Jeannine Johnson
[REDACTED]
Honolulu, Hawai'i 96821
[REDACTED]
[REDACTED]

"PUPUKAHI I HOLOMUA"
(Unite in Order to Progress)

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