

Office of the Public Defender State of Hawaii

Timothy Ho, Chief Deputy Public Defender
Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary



March 13, 2008, 3:15 p.m.

RE: S.B. 2436, S.D. 1: Relating To Crime

Chair Waters and Members of the Committee:

This measure would make the use of e-mails as a form of harassment a misdemeanor offense, and would elevate all types of harassment from petty misdemeanor to a misdemeanor.

The Office of the Public Defender opposes S.B. 2436, S.D. 1.

The type of behavior sought to be proscribed by this measure could be enforced by our current harassment law. Section 711-1106 of the Hawaii Revised Statutes currently prohibits the use of repeated e-mails if it is sent with the intent to harass, annoy or alarm another person.

This measure also changes the focus on the objective act of the defendant to the subjective feelings of the victim. The message in a mass e-mail directed at a group of people, or a blog, could cause one person to suffer from mental, emotional or physical distress, while the same e-mail may have no effect whatsoever on the rest of its recipients. Should the e-mail's author be prosecuted for causing emotional harm? Would bosses have to be careful that their office-wide e-mail could cause their employees to suffer from mental, emotional or physical distress? The police department and prosecutor's office would be inundated with e-mails to be used as "evidence" of harassment by disruptive threats and remote harassment if this bill becomes law.

Harassing e-mails are unlike face-to-face harassment. With face-to-face verbal or physical harassment, there is either physical contact or the threat of physical contact which cannot be terminated with one press of the "delete" button.

Furthermore, we urge this committee to keep harassment at the petty misdemeanor level. The offense of harassment is appropriately classified as a "lesser" offense to assault in the third degree, a misdemeanor. Thank you for the opportunity to comment on this bill.

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POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE RR-NTK

March 13, 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: Senate Bill No. 2436, S.D. 1, Relating to Crime

I am Carlton S. Nishimura, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 2436, S.D. 1, Relating to Crime.

Cyberbullying is a problem that is on the rise across the country and in Hawaii. Because the Internet provides a sense of anonymity, many people are emboldened and act in ways that they would not in person. Passage of this bill will provide the victim of cyberattacks some level of protection and legal recourse.

The Honolulu Police Department urges you to support Senate Bill No. 2436, S.D. 1, Relating to Crime.

Thank you for the opportunity to testify.

Sincerely,

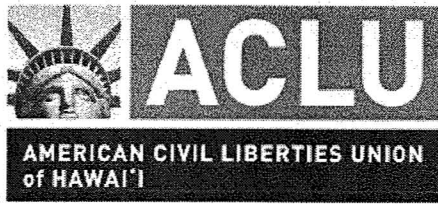
A handwritten signature in black ink, appearing to read "Carlton S. Nishimura", is written over a horizontal line.

CARLTON S. NISHIMURA, Major
Criminal Investigation Division

APPROVED:

A handwritten signature in black ink, appearing to read "Boisse P. Correa", is written over a horizontal line.

for BOISSE P. CORREA
Chief of Police



BY EMAIL: JUDtestimony@Capitol.hawaii.gov

Committee: Committee on Judiciary
Hearing Date/Time: Thursday, March 13, 2008, 3:15 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to SB 2436, SD1

Dear Chair Waters and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to SB 2436, SD1, relating to crime.

The ACLU of Hawaii is aware of the need to protect survivors of domestic violence against further abuse, both emotional and physical. The ACLU of Hawaii also agrees that enforcement of harassment laws and restraining orders are more effective at deterring escalating violence than extended sentences and mandatory minimums. Nevertheless, the ACLU of Hawaii opposes SB 2436, SD 1 as written because it is vague and overbroad, for the following reasons:

- Section (g): this provision would make it a crime for a father to tell a mother that he intends to sue to gain custody of their children. This statement would surely cause the mother to feel emotional distress – the thought of losing one’s children would undoubtedly cause a reasonable person distress – but the statement should not be criminalized. Although threats like this are commonplace in abusive relationships – they are a staple of the power and control techniques exerted by abusers – trying to legislate these statements is unwise because of the vagueness and overbreadth inherent in such legislation. As a result, this bill may lead separated couples to charge each other for harassment for stating their truthful, non-violent intentions in a non-repetitive manner (*e.g.*, that one parent intends to sue to gain custody of the children).
- Section (h): protected free speech is *often* intended to disrupt the orderly conduct of schools and businesses – and that disruptive speech is often effective for precisely that reason. For example, the 400 Campbell High School students who came to the Capitol on Tuesday to protest their lack of air conditioning made a lot of noise and certainly disrupted the orderly conduct of business at the Capitol, but this is the very essence of free speech. Had each of those students called one of your offices using a cell phone – tying up your office phone lines for some period of time – those students would be guilty of a misdemeanor under this bill.

American Civil Liberties Union of Hawaii
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The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

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