



**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 and Labor**

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

RE: S.B. 2456, S.D.2: Relating To Harassment

Chair Waters and Members of the Committee:

This measure would amend the harassment statute (§711-1106, H.R.S.) by inserting the words "or other computer communication," to subsection (1)(c), which proscribes the harassment of another person by repeated communications, including e-mails, telephone calls and facsimile. The Senate Committee on Economic Development and Taxation amended this measure by making the offense of Harassment and Harassment by Stalking class C felonies.

While the Office of the Public Defender did not initially oppose S.B. 2456, we oppose the elevation of these offenses from a petty misdemeanor to a class C felony.

If this measure in its amended form becomes law, the offense of Harassment, which includes actions such as insults, taunts, challenges, strikes and shoves without proof of bodily injury would be punished more severely than Assault in the Third Degree, which is the intentional or knowing causation of bodily injury, or reckless causation substantial bodily injury.

While we can see why people who are victimized by repeated defamatory acts via computer communications do not believe that a petty misdemeanor is sufficient punishment for the amount of damage that the offense causes, this is not reason enough to elevate an offense which is generally thought to be a lesser offense of misdemeanor assault all the way up to a class C felony.

We also believe that our current laws against harassment by stalking, which is punishable as a misdemeanor and a class C felony for subsequent convictions, are sufficient and do not need to be amended.

Thank you for the opportunity to comment on this bill.

000063

Date of Hearing: March 13, 2008

Committee: House Judiciary

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. 2456, SD2 (SSCR2609), Relating to harassment.

Purpose: To provide that harassment includes all computer communications; adds computer communication as a form of nonconsensual contact in the offense of harassment by stalking. Makes such offenses a class C felony. Eff. 7/1/2050 (SD2)

Department's Position: The Department of Education supports S.B. 2456, SD2 (SSCR2609), which broadens the definition of harassment to include "other computer communication." The amended statutory language addresses new, popular means of communication such as instant messaging, chat rooms, blog spaces, Myspace, Facebook, etc., and should enhance the safety of children by criminalizing the use of these methods of communication to harass others.

000064

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

March 13, 2008

RE: S.B. 2456, S.D. 2; RELATING TO HARASSMENT.

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comments on S.B. 2456, S.D. 2.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) 711-1106 relating to the petty misdemeanor offense of harassment and make it a class C felony. In addition, this bill expands the prohibition against repeated electronic mail transmissions without legitimate purpose to include all repeated computer communications.

We understand the intent behind this bill to address electronic harassment since this has been an issue in a particular instance where thousands of emails have been sent out by a person posing as a local attorney to third parties. The emails appear deliberately framed to put the local attorney in a negative light. We do believe that the current laws may not adequately address the seriousness of this situation, but we oppose the elevation of the current harassment petty misdemeanor harassment offense to a class C felony as it would apply to all types of the harassment covered by HRS 711-1106 and not just the situation of the electronic harassment. Thus under S.B. 2456, S.D. 2, a person would be guilty of a C felony for insulting or taunting someone, but would only be guilty of a misdemeanor offense for assaulting them and causing bodily injury. For that reason we feel that the elevation of all types of harassment under HRS 711-1106 is inadvisable as it would lead to some less serious behavior being treated more harshly than more egregious behavior. Instead, we recommend that a new class C harassment offense be created to specifically address the harassment by impersonation situations rather than upgrading the current HRS 711-1106 to a C felony. We would suggest that a Harassment by Impersonation statute be enacted and would propose the following language for the offense:

000065

Section 711- Harassment by Impersonation.

(1) A person commits the offense of harassment by impersonation if that person poses as another person, without the express authorization of that person, and makes or causes to be made, either directly or indirectly, a transmission of any personal information of that person to another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to harass, annoy or alarm any person or in reckless disregard of the risk of harassing, annoying or alarming any person.

(2) For the purposes of this section, the following definitions shall apply:

(a) "Pose" means to falsely represent oneself, directly or indirectly, as another person or persons.

(b) "Personal information" means information associated with an actual person that is a name, an address, a telephone number or an electronic mail address.

(3) Harassment by impersonation is a class C felony.

We would respectfully request your favorable consideration of the proposed amendment to S.B. 2456, S.D. 2 and thank you for this opportunity to testify.

000060

LAW OFFICES
OF
MARVIN S. C. DANG
A Limited Liability Law Company

MAILING ADDRESS:

P.O. BOX 4109
HONOLULU, HAWAII 96812-4109

TELEPHONE: (808) 521-8521
FAX: (808) 521-8522

March 13, 2008

Rep. Tommy Waters, Chair,
and members of the House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 2456, Senate Draft 2 (Harassment)**
Hearing Date/Time: Thursday, March 13, 2008, 3:15 P.M.

I am submitting this testimony on behalf of my law firm the **Law Offices of Marvin S.C. Dang, LLC**.

We support the intent of this Bill.

The purposes of this Bill are to: provide that harassment include all computer communications; and add computer communication as a form of nonconsensual contact in the offense of harassment by stalking.

My law practice emphasizes, among other things, collections law, foreclosures, and creditors rights. Since April, 2007, a number of my Hawaii attorney colleagues and I have received thousands of scam e-mails from an anonymous sender. These e-mails are also being sent to people outside the legal community. The messages in these e-mails are false, derogatory, and defamatory about me, about specific attorneys in my law office, about other Hawaii attorneys, about politicians, and about others. The sender (perpetrator) has actually pretended that the messages in the e-mails are written by me, by certain Hawaii attorneys, and by others. This type of identity theft is ironic because I was the Vice Chair of the Hawaii Identity Theft Task Force. It has been suggested that the perpetrator is a disgruntled debtor who might be the subject of a pending collection or foreclosure action by my law firm.

Attached is a Honolulu Advertiser article dated August 27, 2007 and entitled "Hawaii attorney target of online harassment." The article describes the harassing, defamatory e-mails in which the perpetrator is impersonating me.

As currently drafted, this Bill would amend existing sections 711-1106 and 711-1106.5, Hawaii Revised Statutes, thereby unnecessarily elevating all acts of harassment to a class C felony. We believe that a separate section tailored to address the specific offense of harassment by

000067

Rep. Tommy Waters, Chair,
and members of the House Committee on Judiciary
March 13, 2008
Page 2

impersonation with a class C felony classification is more appropriate. Therefore, we propose that the contents of this Bill be replaced by the creation of a new section to Chapter 711, Hawaii Revised Statutes. We consulted with a Deputy Attorney General on developing this new language. The new section would read as follows:

"Section 711- Harassment by Impersonation. (1) A person commits the offense of harassment by impersonation if that person poses as another person, without the express authorization of that person, and makes or causes to be made, either directly or indirectly, a transmission of any personal information of that person to another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to harass, annoy or alarm any person or in reckless disregard of the risk of harassing, annoying or alarming any person.

(2) For the purposes of this section, the following definitions shall apply:

(a) "Pose" means to falsely represent oneself, directly or indirectly, as another person or persons.

(b) "Personal information" means information associated with an actual person that is a name, an address, a telephone number or an electronic mail address.

(3) Harassment by impersonation is a class C felony."

Thank you for considering this testimony.

LAW OFFICES OF MARVIN S.C. DANG, LLC

By: Marvin S. C. Dang
MARVIN S.C. DANG
Member Manager

Enclosure

000068

Posted on: Monday, August 27, 2007

Hawaii attorney target of online harassment

By Greg Wiles
Advertiser Staff Writer

As vice chairman of the state Identity Theft Task Force, attorney Marvin Dang is well aware of ways to fend off cyber thieves.

But for the past four months Dang's encountered an unusual offshoot of identity theft: use of his name in offensive e-mails in an attempt to harass him and sully his reputation.

Dang has been unable to stop or find out who is sending the messages, which now total more than 1,000 and have been sent to him, attorneys he knows, prominent lawmakers, family members and others.

The messages range from crude attempts to paint Dang as a racist, to others that try to link him to drug use and pornography.

There have been e-mails that smack of threats and intimidation, such as one noting Dang unknowingly walked by the sender four times in two weeks or that Dang should change where he eats lunch. He's been asked how he got such a good parking space or where he purchased a shirt he wore for a picture in a local publication.

"It's a situation where you're wondering how someone would do something like this," Dang said. Each time he comes across an e-mail, he makes a copy. They fill two 3 1/2-inch-thick black binders.

"I've never seen anything along these lines," Dang said.

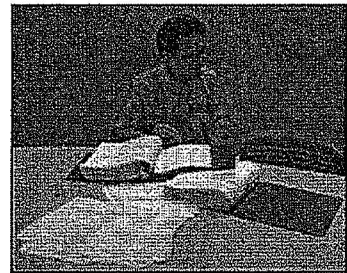
Unfortunately for Dang and others, use of e-mail and Web postings to libel and create problems for people appears to be spreading.

Cases are cropping up in other states, and the California State Assembly is considering including the offenses under its identity-theft statutes, said Jay Foley, executive director of the Identity Theft Resource Center in San Diego.

"We're hearing about more and more of it," Foley said. "Every day we wake up and there's more and more you can do with a computer."

Foley's experienced the problem firsthand. Someone got hold of his personal e-mail account's password and posted an online personal want ad talking about his supposed sexual preferences. Foley has since closed that e-mail account.

He knows of cases where derogatory e-mails led to a Sacramento resident losing her car and having to install a home security system. Foley said in another case, someone manipulated a nude photo to place a teacher's face on it and began circulating the bogus picture around the Internet.



Attorney Marvin Dang looks over his collection of e-mails circulated anonymously to defame or threaten him. The vice chairman of the state Identity Theft Task Force has spent months dealing with the attacks.

JEFF WIDENER | The Honolulu Advertiser

PROTECT YOURSELF

Here are some steps to take if you find yourself the subject of Internet harassment and scam e-mails.

- If someone is using your personal e-mail after stealing your password, consider closing down the e-mail account.
- Contact your Internet service provider to see if they can help find the offender.
- File a police report.
- Make copies of all the e-mails and document your

"It was detrimental to her career," he said.

Foley said one of the worst cases involved a stolen password and an online posting supposedly from the person listing their address and some of their unusual sexual fantasies.

FACELESS SENDER

Dang's problems began in April, when an attorney acquaintance queried him about a questionable e-mail that was circulating. The message read:

"Dear Voter,

"We don't need a (racist slur) from Hawaii to be the president so help my cause in stopping this injustice.

"Friend of Marvin Dang"

Dang recoiled and remembers thinking that someone was attempting to steal his name or perhaps ruin his reputation.

In weeks that followed, it became more apparent that both were the case.

He started to get odd e-mails himself while more friends reported receiving e-mails defaming him. Dang said it appears the sender has harvested information about him on the Internet, pulling down names of lawyers he volunteers with and researching his political relationships and business clients. Some of these people are now receiving the electronic messages.

After learning of about a dozen e-mails, Dang contacted the state attorney general's office, the Federal Bureau of Investigation and the Honolulu Police Department. Dang said the origin of the e-mails has been difficult to trace because the sender uses Web services in other countries that guarantee the sender's identity will be protected.

The services allow the sender to be listed as "anonymous" or to use whatever name they want to be listed as sending the message.

Dang has been listed as the originator on some of the e-mails, while others have listed prominent local politicians, Dang's workers and family members as the sender.

In some cases, the names appear to have been grabbed from other sources. One supposedly was sent by George Orwell, perhaps an allusion to the deceased author whose novel "1984" included the line "Big Brother is watching you."

E-MAILS GET NASTIER

While the initial e-mails were subtle in libeling Dang, some of them have become more distasteful and ugly. One e-mail supposedly from Dang to another attorney noted, "got a new shipment of nose candy. Contact me."

Others have mentioned kiddie porn, gay Web sites or have made derogatory statements about people close to him. They've listed Dang, a former state legislator, as head of a dubious political committee. That message makes disagreeable references about certain Hawai'i ethnic groups and asking for money so he can help them.

Included in the messages are Dang's mailing address and telephone and fax numbers.

The state attorney general's office confirmed it is looking into the incidents but would not say more because the matter is under investigation.

time and expenses in dealing with problems. You can use this record to seek restitution when the person is caught, said Jay Foley, executive director of the Identity Theft Resource Center.

- Consider reaching out to people you know to explain the situation, just in case they've received the e-mails.

- In the most serious of cases, take steps to ensure your personal safety.

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000070

Dang's work includes collecting debts for credit card companies and pursuing foreclosures for mortgage lenders. He suspects the culprit is an unhappy debtor whom he sued and now holds a grudge against him.

WARNING TO OTHERS

Meanwhile, Dang said he continues to receive up to a dozen of the e-mails a day, while other people he knows can receive multiple messages. He's taken steps to notify acquaintances about ignoring the derogatory missives.

"You always wonder who is getting these things," Dang said. "Credibility is very important and you want to make sure what is said about you is not scum lies like these."

Dang said he decided to make his story public to help educate people.

"Anyone can be the victim of e-mail harassment," he said. "Unfortunately, it's just too easy for a nameless, faceless perpetrator to fake the name of a sender."

"Don't accept at face value every e-mail you receive."

Reach Greg Wiles at gwiles@honoluluadvertiser.com.

Back

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000071