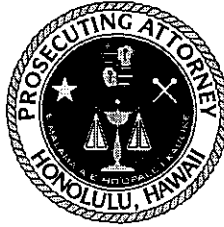


DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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 BRIAN TANIGUCHI, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**Twenty-Fourth State Legislature**  
**Regular Session of 2008**  
**State of Hawaii**

February 12, 2008

**RE: S.B. 2962; RELATING TO PUBLIC SAFETY.**

Chair Taniguchi and members of the Senate Judiciary and Labor Committee, the Department of the Prosecuting Attorney submits the following testimony in strong support of Senate Bill 2962.

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. S.B. 2962 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, S.B. 2962 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.

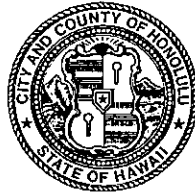
For this reason, we strongly support the stronger sentencing for electronic enticement and promoting child abuse, as well as the creation of new laws on electronic enticement and indecent electronic display to a child. We also strongly support the proposed amendments which would allow Hawaii to participate 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 S.B. 2962 and ask that you pass S.B. 2962 out.

Thank you for this opportunity to testify.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org

MUFI HANNEMANN  
MAYOR



BOISSE P. CORREA  
CHIEF

PAUL D. PUTZULU  
MICHAEL D. TUCKER  
DEPUTY CHIEFS

OUR REFERENCE JC-NTK

February 12, 2008

The Honorable Brian T. Taniguchi, Chair  
and Members  
Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: Senate Bill No. 2962, 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 Senate Bill No. 2962, Relating to Public Safety.

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

Under chapter 707, the bill makes several changes which would greatly protect children. For instance, under Electronic enticement of a child in the first degree, it removes the condition of one year of imprisonment and 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.

The Honorable Brian T. Taniguchi, Chair  
and Members

Page 2

February 12, 2008

Further, this bill creates the offense of Indecent electronic display to a child which again involves grooming behavior. This desensitizes a child to viewing sexual conduct and so entices the child into sexual activity because it is made to appear like normally accepted behavior.

In addition, possessing ten or more images of any form of child pornography of a minor under the age of twelve, any sadomasochistic abuse of a minor, sexual penetration of a minor, or any 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.

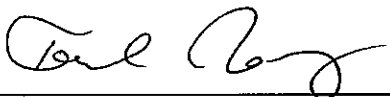
Thank you for the opportunity to testify.

Sincerely,



JANET CROTTEAU, Captain  
Criminal Investigation Division

APPROVED:



*for* BOISSE P. CORREA  
Chief of Police

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

Senator Brian T. Taniguchi  
Chairperson and Members  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 329  
Honolulu, Hawaii 96813

Dear Senator Taniguchi and Members:

**Re: Senate Bill 2962, Relating to Public Safety**

The Hawai'i Police Department supports the passage of Senate Bill 2962, 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 Senate Bill 2962.

Sincerely,

  
LAWRENCE K. MAHUNA  
POLICE CHIEF



CHARMAINE TAVARES  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# POLICE DEPARTMENT COUNTY OF MAUI

55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
FAX (808) 244-6411

February 11, 2008



THOMAS M. PHILLIPS  
CHIEF OF POLICE

GARY A. YABUTA  
DEPUTY CHIEF OF POLICE

The Honorable Brian T. Taniguchi, Chair  
And Members of the  
Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members of the Committee:

**SUBJECT: Senate Bill No. 2962, 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 Senate Bill No. 2962, 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 Data 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

The Honorable Brian T. Taniguchi, Chair  
And Members of the  
Committee on Judiciary and Labor  
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.

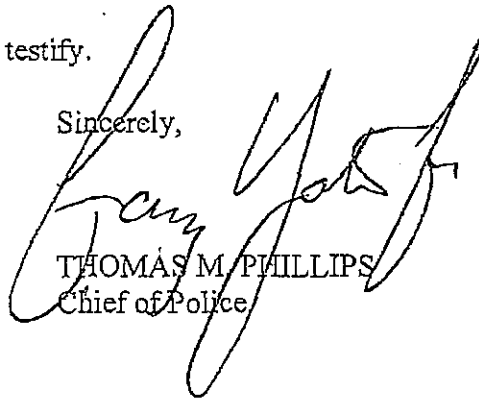
This bill also creates a class C felony offense of Indecent Electronic Display to a Child, which targets specific grooming activities. In internet communications with children (or law enforcement officers posing as children), predators often transmit images of themselves masturbating or exposing their 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 Senate Bill No. 2962, Relating to Public Safety.

Thank you for the opportunity to testify.

Sincerely,



THOMAS M. PHILLIPS  
Chief of Police

## testimony

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**From:** Jeannine Johnson [jeannine@hawaii.rr.com]  
**Sent:** Sunday, February 10, 2008 6:51 PM  
**To:** testimony  
**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 SB2218 (TRO monitoring), SB2301 (crimes against pregnant women), SB2962 (sex offenders) and SB3182 (good Samaritans)

### COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice Chair

SB 2218 RELATING TO ELECTRONIC MONITORING  
SB 2301 RELATING TO CRITERIA FOR EXTENDED TERMS OF IMPRISONMENT  
SB 2962 RELATING TO PUBLIC SAFETY  
SB 3182 RELATING TO EXTENDED SENTENCING

**DATE:** Tuesday, February 12, 2008  
**TIME:** 9:00 a.m.  
**PLACE:** Conference Room 016

Aloha Chair Taniguchi and Vice Chair Hee,

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 the public.

Mahalo for your support of each of these excellent bills.

*Jeannine*

Jeannine Johnson  
5648 Pia Street  
Honolulu, Hawai'i 96821  
Ph: 373-2874 / 523-5030 (w)  
Email: [jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)  
"PUPUKAHI I HOLOMUA"  
(Unite in Order to Progress)





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

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**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2962, RELATING TO PUBLIC SAFETY.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Tuesday, February 12, 2008 **TIME:** 9:00 AM

**LOCATION:** State Capitol Room 016  
*Deliver to: Committee Clerk, Room 219, 1 copy*

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

---

Chair Taniguchi 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.



Testimony on behalf of the  
Office of the Public Defender, State of Hawai'i  
to the Senate Committee on Judiciary and Labor

February 11, 2008

RE: S.B. 2962: Relating To Public Safety.

Senator Taniguchi and Members of the Committee:

S.B. 2962 seeks to create some new offenses, provide for mandatory prison terms for some existing offenses, broaden the application of other current offenses and, finally, provides for even more draconian living conditions for convicted sex offenders.

We believe this bill is ill-advised and cannot support it in its current form.

The bill creates a new 3<sup>rd</sup> degree offense for Electronic Enticement of a Child and makes it a misdemeanor offense. Currently, our 1<sup>st</sup> and 2<sup>nd</sup> degree offenses punish electronic communication, done intentionally or knowingly, with someone who is or is believed to be under the age of 18, for the purpose of committing certain specified offenses: the 1<sup>st</sup> degree offense covers murder, class "A" felonies and offenses defined in HRS § 846E-1 (the statute covering the registration of sex offenders and other covered offenders); the 2<sup>nd</sup> degree offense covers any other felonies. Both current laws also require that the offender agree to meet with the minor, or person believed to be a minor, and intentionally or knowingly travel to the agreed upon meeting place at the agreed upon time.

The proposed 3<sup>rd</sup> degree offense in this bill would apply to all offenses listed under § 846E-1 and would delete the requirements that the offender agree to meet the minor, or person pretending to be a minor, and travel to the meeting place. We believe this proposed law is vague and overbroad. It would punish pure communication without any other required act (such as eliciting an agreement to meet or traveling to an agreed upon meeting place). When one considers that the person doing the communicating could actually be someone under the age of 18 or a young adult, who has no intention of acting upon the electronic communication, it is clear how this law could go overboard in its application.

We note that we would also object to the deletion in Section 7 of the required travel element in the 2<sup>nd</sup> degree offense. When dealing with internet communication which is often more in the realm of imagination than reality for one or both persons involved, it is necessary that serious offenses such as these require actual conduct, such as travel, to complete the offense.

The other new offense proposed in Section 2, Indecent Electronic Display to a Child, essentially punishes "lewd and lascivious" conduct (such as masturbation) over the internet as a class C felony. Ironically, such behavior in person, which would seem to be far more distressing to a minor, is currently a misdemeanor or petty misdemeanor under HRS §§ 707-733 (1)(b) and 707-734. If this new offense is to be created, it should not be more serious than our existing statutes.

Section 4 would add to the offense of Promoting Child Abuse in the 2<sup>nd</sup> Degree by including the possession of 10 or more images of any form of child pornography but requires that only one of the pictures be of the enumerated categories, which all would agree are particularly disturbing. This is unreasonable, especially in light of the fact that the new law would also punish this offense with a mandatory minimum 10 year prison term, of which five years would have to be served before being eligible for parole.

Section 5 proposes a mandatory sentence of one year imprisonment as a condition of probation if a person guilty of the 3<sup>rd</sup> degree offense receives a sentence of probation.

It is disturbing that proponents of this legislation want to mandate incarceration and remove any discretion from the court in these situations. Such enactments fail to recognize the role of the courts in determining appropriate sentences for each case that comes before the judge.

For that same reason, we oppose the proposal in Section 6 that would provide for a mandatory 10 year prison term upon conviction for Electronic Enticement of a Child in the 1<sup>st</sup> Degree. The current law provides for the possibility of probation, if appropriate, but does mandate one year in jail as a condition of that probation. Also currently, the court may impose a 10 year prison term when the court determines that to be the appropriate sentence. That discretion should remain with the courts.

Regarding the proposed changes to HRS § 846E, we believe that most of these would drive more offenders underground, burden already overtaxed law enforcement resources and, ultimately, provide no greater protection for the community.

These proposed changes include making available to the public where a covered offender parks his car, his cellphone number, the route(s) that he drives in the course of his employment, a list of his arrests (i.e. crimes for which he was NOT convicted), and, if he is homeless, a description of the location where he is sleeping at night.

It is becoming clear both in Hawaii and throughout the mainland that these offenders are already largely unable to find places to live if they do not already

own their own home and to find employment. The additional public notification listed above will render it all but impossible for these people to live in Hawaii and abide by this law. That creates the real possibility that the offenders, without the resources to relocate outside our state, will simply go underground, stop registering and no longer be subject to supervision. Such a result not only fails to protect the public, it places our community at greater risk.

Studies have shown that the lowest cases of recidivism occur when the offender is subject to treatment and monitoring. This is pointedly borne out by the statistics compiled by Dr. Barry Coyne who is in charge of Sex Offender Treatment within our Department of Public Safety. In addition to Hawai'i's statistics, Dr. Coyne provided a previous task force with the results of studies in other jurisdictions. At that time, only one state so far had specifically studied the effect of a notification law on sex offender recidivism. Washington, the first state to require community notification for sex offenders (in 1990), found no difference in recidivism between those men with notification and those without. Dr. Coyne did not suggest that these results were the authoritative conclusion on this issue but did note that no one has demonstrated a measurable positive connection between public notification and reduced recidivism.

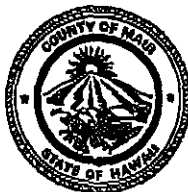
What has been demonstrated is the direct positive connection between treatment and monitoring and reduced recidivism. It stands to reason that laws that cause offenders to be unable to reasonably live in our communities (i.e. to rent homes or get jobs) create the real risk of sending offenders underground, away from monitoring and toward a greater risk of reoffending. It is imperative that our laws strike the necessary balance between an appropriate level of monitoring and public notification.

Finally, the proposed 3 tier system would create an even harsher offender registration law than we already have with the same risk noted above. Currently, there is a large group of offenders for whom lifetime registration is mandated. For others, class A offenders may seek relief from registration after 25 years, class B offenders after 15 years and class C offenders after 10 years. In the strange 3 tier system proposed in this bill, certain class C offenders would be subject to registration for a minimum 25 years, rather than the current 10 year minimum, and certain class B offenders would be subject to registration for a minimum 25 years, rather than the current 15 year minimum. We see no satisfactory explanation for these changes.

These are just some of the significant reasons that we cannot support this legislation.

Thank you for the opportunity to comment on this bill.

CHARMAINE TAVARES  
Mayor



BENJAMIN M. ACOB  
Prosecuting Attorney

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**LATE**

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February 12, 2008

THE HONORABLE BRIAN T. TANIGUCHI, CHAIR  
THE HONORABLE CLAYTON HEE, VICE-CHAIR  
COMMITTEE ON JUDICIARY AND LABOR

THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008  
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,  
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,  
IN SUPPORT OF SENATE BILL NO. 2962  
RELATING TO CRIME

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly supports S.B. 2962 Relating to Crime.

Perhaps there can be no class of individuals more vulnerable than our children. Each day we see and hear in the media countless numbers of online predators utilizing the internet to target and prey upon innocent and unsuspecting children. Unfortunately, these predators abuse modern day technology to covertly invade what we consider our most secure place, our home. Sadly, however, we have also seen numerous real life cases end in unimaginable tragedy.

This Bill seeks to provide law enforcement officials the much needed tools to effectively protect our children and at the same time combat the harsh realities of modern day life. Specifically, this Bill proposes the following:

1. Updates Hawaii's sex offender registry laws in an effort to effectuate partial compliance with federal law;

2. Creates the new offense of Electronic Enticement of a Child in the Third Degree, a misdemeanor;
3. Creates the offense of Indecent Electronic Display to a Child, a class C felony;
4. Amends Promoting Child Abuse in the Second Degree to include possession of particularly violent or egregious child pornography;
5. Update the repeat offender sentencing statute to include the offenses of Failure to Comply with Covered Offender Registration Requirements and Indecent Electronic Display to a Child, which would trigger mandatory prison without the possibility of parole;

Indeed, all of the above proposed amendments are intended to protect our citizens from these sexual predators. The first proposal provides law enforcement an opportunity to participate in a comprehensive nationwide network of state registries in a concerted effort to effectively share information regarding sex offenders. The second, third and fourth proposals are intended to proscribe predatory behavior which is consistent with child sex offenders. The fifth and final proposal will mandate a court to sentence certain repeat felons to mandatory prison.

In conclusion, our Department strongly supports S.B. 2962. In order to effectively combat sex offenses against our children, our criminal laws must contemplate the capabilities of modern day technology. Thank you for the opportunity to testify.

(S.B. 2962, Relating to Crime.)