

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

January 26, 2010

H.B. No. 2254: RELATING TO COMPUTER SECURITY

Chair Karamatsu and Members of the Committee:

We question the necessity for H.B. No. 2254. If the unauthorized installation of software allows the offender to exert control over property, passwords or any other similar information, H.R.S. §§ 708-891 and 708-891.5, Computer Fraud in the First and Second Degrees cover those situations. If the unauthorized installation of software results in damage to a person's computer, H.R.S. §§ 708-892 and 708-892.5, Computer Damage in the First and Second Degrees already cover that situation. So there are already a number of provisions which appear to address unauthorized access to a person's computer for malicious purposes.

H.B. No. 2254 does not require that the software cause any damage either to the computer or to the person affected by the installation and seeks to punish an offender as a Class C felon. Under those circumstances, that classification appears excessive. It is not certain what problem this measure is trying to address. There is a concern that the bill will have unintended consequences such as discouraging the legitimate marketing of certain computer software

We oppose passage of H.B. No. 2254. Thank for the opportunity to comment on this measure.

karamatsu1-Kenji

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Monday, January 25, 2010 12:45 PM
To: JUDtestimony
Subject: HB2254 to be heard Tuesday, 01/26/10 at 2:30pm in Room 325

TO: Representative Karamatsu, Chair

Representative Ito, Vice-Chair

Members of the Judiciary Committee

FROM: Dara Carlin, M.A.

Domestic Violence Survivor Advocate

881 Akiu Place

Kailua, HI 96734

DATE: January 25, 2009

RE: Support for HB2254, Relating to Computer Safety, WITH SUGGESTIONS

Thank you for presenting such a pertinent measure to the day in which we live. I know the intent of this proposal has nothing to do with Domestic Violence, but I'm hoping that you might consider expanding this proposal just a tad to encompass a problem that's been complicated, rather than benefited, by computer usage.

When a victim of domestic violence has successfully fled and terminated her relationship with her abuser, her life and behaviors go through a sort of metamorphosis as she blossoms from victim to survivor. Unfortunately the same cannot be said for the abusers who are left behind and whose controlling, self-righteous and manipulative behaviors are often amplified once she's left as they struggle to regain the power and control they've lost over her.

In almost all cases of divorce where former spouses have children in-common, a bare minimum exchange of information between the two parents is necessary; the least conflictual and most convenient way to achieve that has been through the use of email. In cases where distance is a barrier to visitation, webcams have become a viable option in keeping a parent in another state and their child connected.

In domestic violence cases however, the use of a computer becomes a new venue for the abuser to keep tabs on his former victim's activities and is creatively used to stalk her through the use of spyware and other software applications that the survivor and/or her children may upload unbeknownst to them. Although there is federal statute against such computer intrusions and interceptions, spyware is EASY to obtain and even with proof, federal authorities decline to prosecute (let alone investigate) these matters. So what I'm hoping for is that you'd consider adding the following language to this measure:

(c) directly or otherwise enlists a third party to install hacking programs, keyloggers or any other form of spyware that violate the privacy of the authorized adult user, particularly in cases where domestic violence has played a role between the authorized and unauthorized users

Below is what's written into federal statute with more to be found at: www.justice.gov/criminal/cybercrime

§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

- (1) Except as otherwise specifically provided in this chapter any person who--
 - (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
 - (b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when--
 - (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - (ii) such device transmits communications by radio, or interferes with the transmission of such communication; or
 - (iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or
 - (iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or
 - (v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) (i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(a)(ii), 2511(2)(b)-(c), 2511(2)(e), 2516, and 2518 of this chapter, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation,

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

Thank you for the opportunity to provide testimony on this matter.

Respectfully submitted,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

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karamatsu1-Kenji

From: brian tokuuke [briantokuub@yahoo.com]
Sent: Monday, January 25, 2010 2:30 PM
To: JUDtestimony
Subject: Testimony: HB 2254

Dear Chair Karamatsu, Vice-Chair Ito and Committee Members,

I am submitting this piece of testimony in *favor* of passing HB 2254, "Relating to Computer Security." It is an extremely important bill as it protects honest citizens from identification fraud as many times these programs that are installed into other people's computers can be used to retrieve personal information such as phone numbers, home addresses, and credit card information. These criminals will resort to any means necessary in order to retrieve this type of information that often times means falsifying who they are, they must be punished. In addition, these programs can contain viruses that are able to shut down entire networks and could someday get to the point in which it affects cities, states, and countries. Thank you for your time and please vote in favor of HB 2254, "Relating to Computer Security."

Sincerely,
Brian Tokuuke

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