

JAN 21 2011

A BILL FOR AN ACT

RELATING TO CYBERBULLYING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that across the country,
2 states are grappling with escalating instances of cyberbullying
3 and their often tragic results. Currently, twenty-five states
4 have passed laws against cyberbullying, and most states direct
5 local school districts on how to deal with cyberbullying -
6 ranging from training personnel to disciplining students.

7 The department of education and board of education have
8 both rules and policies governing cyberbullying. As recently as
9 the September 28, 2010, meeting of the board of education,
10 members reviewed how the department addresses cyberbullying, and
11 what might be done to provide greater protection for students.

12 The legislature further finds that currently, the
13 department refers cyberbullying issues to the police. The
14 police, however, are hampered in their response because there is
15 no clear penalty for cyberbullying.

16 The purpose of this Act is to provide greater protection
17 for victims of cyberbullying by establishing an offense of
18 harassment by cyberbullying, with the first or second offense as



1 a misdemeanor, and a third or any subsequent offense as a class
2 C felony.

3 SECTION 2. Chapter 711, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§711- Harassment by cyberbullying. (1) A person
7 commits the offense of harassment by cyberbullying if, with
8 intent to harass, annoy, or alarm another person, or in reckless
9 disregard of the risk thereof, that person engages in a course
10 of conduct involving pursuit, surveillance, or nonconsensual
11 contact upon the other person on more than one occasion without
12 legitimate purpose.

13 (2) A person convicted under this section may be required
14 to undergo a counseling program as ordered by the court.

15 (3) For purposes of this section:

16 "Cyberbullying" means electronically transmitted acts,
17 whether by the Internet, cell phone, personal digital assistance
18 device, or any wireless hand-held device, which a person has
19 exhibited toward another person that causes mental or physical
20 harm to the other person and is sufficiently severe, persistent,
21 or pervasive that it creates an intimidating, threatening, or
22 abusive environment.



1 "Nonconsensual contact" means any contact that occurs
2 without that individual's consent or in disregard of that
3 individual's express desire that the contact be avoided or
4 discontinued. Nonconsensual contact includes direct personal
5 visual or oral contact and contact via telephone, facsimile, or
6 any form of electronic communication, as defined in section
7 711-1111(2), including electronic mail transmission.

8 (4) Harassment by cyberbullying is a misdemeanor and the
9 person shall be sentenced as follows:

10 (a) For the first offense the person shall serve a minimum
11 jail sentence of forty-eight hours;

12 (b) For a second offense that occurs within one year of
13 the first conviction, the person shall be termed a
14 "repeat offender" and serve a minimum jail sentence of
15 thirty days; and

16 (c) For a third or any subsequent offense that occurs
17 within two years of a second or subsequent conviction,
18 the offense shall be a class C felony."

19 SECTION 3. Section 708-890, Hawaii Revised Statutes, is
20 amended by adding a new definition to be appropriately inserted
21 and to read as follows:



1 "Cyberbullying" means electronically transmitted acts,
2 whether by the Internet, cell phone, personal digital assistance
3 device, or any wireless hand-held device, which a person has
4 exhibited toward another person that causes mental or physical
5 harm to the other person and is sufficiently severe, persistent,
6 or pervasive that it creates an intimidating, threatening, or
7 abusive environment."

8 SECTION 4. Section 708-893, Hawaii Revised Statutes, is
9 amended by amending subsection (1) to read as follows:

10 "(1) A person commits the offense of use of a computer in
11 the commission of a separate crime if the person:

12 (a) Intentionally uses a computer to obtain control over
13 the property of the victim to commit theft in the
14 first or second degree; or

15 (b) Knowingly uses a computer to identify, select,
16 solicit, persuade, coerce, entice, induce, or procure
17 the victim or intended victim of the following
18 offenses:

19 (i) Section 707-726, relating to custodial
20 interference in the first degree;

21 (ii) Section 707-727, relating to custodial
22 interference in the second degree;



- 1 (iii) Section 707-731, relating to sexual assault in
- 2 the second degree;
- 3 (iv) Section 707-732, relating to sexual assault in
- 4 the third degree;
- 5 (v) Section 707-733, relating to sexual assault in
- 6 the fourth degree;
- 7 (vi) Section 707-751, relating to promoting child
- 8 abuse in the second degree; [~~or~~]
- 9 (vii) Section 711- , relating to harassment by
- 10 cyberbullying; or
- 11 [~~(vii)~~] (viii) Section 712-1215, relating to promoting
- 12 pornography for minors."

13 SECTION 5. The provisions of this Act shall be liberally
14 construed to give effect to the purposes thereof.

15 SECTION 6. Nothing in this Act is intended to interfere
16 with the First Amendment rights of free speech and expression of
17 any person affected.

18 SECTION 7. If any provision of this Act, or the
19 application thereof to any person or circumstance is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act, which can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect upon its approval.

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Report Title:

Harassment by Cyberbullying; Establishment; Penalties

Description:

Establishes an offense of harassment by cyberbullying, with the first and second offenses as misdemeanors, and any third and subsequent offense as a class C felony.

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