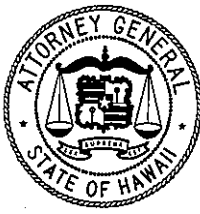


HB 618, HD1

EDT



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 618, H.D. 1, RELATING TO OFFENSES AGAINST PUBLIC ORDER.

BEFORE THE:

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

DATE: Monday, March 21, 2011 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Fukunaga and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill in attempting to address the problem of online harassment, but opposes the bill as it creates new offenses that are already covered under the law.

This bill creates two new offenses: (1) aggravated harassment by online impersonation; and (2) harassment by online impersonation. This bill also provides that if harassment by impersonation, as set out in section 711-1106.6, Hawaii Revised Statutes, is committed with the intent to solicit a response by emergency services personnel then the offense is upgraded to a class C felony offense

Harassment by Online Impersonation

The new offense of harassment by online impersonation makes the use of another person's name or persona to create a web page on, or to post one or more messages on, a commercial social networking site, without the permission of the other person and with the intent to harm, defraud, intimidate, or threaten any person, a misdemeanor offense. The repeated

commission of this offense within a five-year period will result in the commission of the new offense of aggravated harassment by impersonation, a class C felony.

It appears that the conduct intended to be prohibited by this new offense is already covered by the offense of harassment by impersonation, set out in section 711-1106.6, Hawaii Revised Statutes, as follows:

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 the 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.

If a person uses the name of another to create a web page on, or to post a message on, a social networking site, that person causes the transmission of personal information of another. If this conduct is done maliciously, it is usually done with intent to harass, annoy, or alarm another. Therefore, this conduct should be covered by the existing offense of harassment by impersonation.

The proposed offense requires that the conduct be done with intent to harm, defraud, intimidate, or threaten somebody. But this specific intent provision is confusing and raises concern. The prohibited conduct is usually associated with harassing behavior. The proposed offense itself is entitled "harassment by online impersonation," but the stated intent is not to harass, but to "harm, defraud, intimidate, or threaten." These intents are usually associated with other crimes. "Defraud" usually refers to the commission of theft. If the person was attempting to defraud another, then the theft offenses should cover the conduct. If the person was attempting to "intimidate"

or "threaten" another, then the terroristic threatening offenses should cover the conduct.

We offer two other observations about the new proposed offense. The term "persona" is vague and undefined, and may create problems in the interpretation and application of the law. And while the offense is entitled "harassment by online impersonation," it actually only applies to acts of impersonation on a social networking site, not online generally. The proposed offense targets an extremely limited area of online activity.

SOLICITATION OF RESPONSE BY EMERGENCY SERVICES PERSONNEL

This bill provides that if harassment by impersonation, as set out in section 711-1106.6, Hawaii Revised Statutes, is committed with the intent to solicit a response by emergency services personnel, then the offense is upgraded to a class C felony offense.

It appears, however, that the prohibition may be misplaced when it is added to the harassment by impersonation statute. The focus of the prohibition is not really harassment by impersonation, but making a false report or alarm to emergency services. Section 710-1014.5, Hawaii Revised Statutes, sets out the offense of misuse of 911 emergency telephone service. It already appears to address the issue. It prohibits a person from knowingly causing a false alarm or making a false complaint or report of false information in reckless disregard of the risk that a public safety agency will respond by dispatching emergency services. This offense is a misdemeanor.

Furthermore, by creating a class C felony offense of harassment by impersonation that requires the actor to have the "intent to solicit a response by emergency services personnel,"

the bill may be adding an specific intent element to the crime that may conflict with or confuse the specific intent to "harass, annoy, or alarm any person," that already exists in the harassment by impersonation statute.

For the foregoing reasons, the Department respectfully requests that this measure be held.

From: mailinglist@capitol.hawaii.gov
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Date: Tuesday, March 15, 2011 7:12:35 PM

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Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Chris Lethem
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Submitted on: 3/15/2011

Comments: