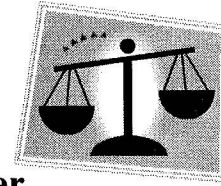




Office of the Public Defender State of Hawaii



Timothy Ho, Chief Deputy Public Defender
Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary

February 22, 2011, 2:00 p.m.

RE: H.B. 618: Relating to Offenses Against the Public Order

Chair Keith-Agaran and Members of the Committee:

This measure would create two new offenses, online harassment and aggravated online harassment. Although we understand the need to have our criminal laws keep up with modern technology, and that cyber bullying has become a new and possibly dangerous form of harassment, we believe that the penalties should be more gradually applied.

The Office of the Public Defender opposes H.B. 618.

While some individuals use the internet to harm other people, others use the internet to play practical jokes on one another. There is a fine line between a practical joke and harassment. We believe that the offense of online harassment should be a petty misdemeanor for two reasons. First, the classification as a petty misdemeanor will prevent a defendant from requesting a jury trial. A non-jury trial is faster and less expensive than a jury trial. The rate of conviction for non-jury trials is significantly higher than jury trials. Secondly, a petty misdemeanor is a more appropriate penalty for first-time offenders, who are more likely to be young men or women.

If this committee is intent on passing out some form online harassment legislation, we would ask this committee to consider creating three degrees of online harassment. Online harassment in the third degree would be petty misdemeanor, online harassment in the second degree, for a second offense within a five year period would be a misdemeanor and online harassment in the first degree, a third offense within a five year period would be a class C felony.

Section 2 of this measure makes the offense of harassment by impersonation a class C felony if it is intended to solicit a response by emergency services personnel. These types of actions are already prohibited by §710-1014.5 (Misuse of 911 emergency telephone service), a misdemeanor offense. The only difference is that in addition to the use of a telephone, this measure includes oral and written statements, and statements conveyed by electronic means. In order to be consistent with the above-mentioned statute, we believe that this offense should remain a misdemeanor. Please remember that every new criminal law that is enacted places an additional burden on our already overburdened criminal justice system.

Thank you for the opportunity to comment on this bill.

LATE TESTIMONY

Testimony for HB618 on 2/22/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 22, 2011 11:14 AM

To: JUDtestimony

Cc: crslethem@gmail.com

Testimony for JUD 2/22/2011 2:00:00 PM HB618

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Chris Lethem

Organization: Family Court Interventions Task Force

Address:

Phone:

E-mail: crslethem@gmail.com

Submitted on: 2/22/2011

Comments:

LATE TESTIMONY

Testimony for HB618 on 2/22/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 22, 2011 12:04 PM

To: JUDtestimony

Cc: thepoags@usa.net

Testimony for JUD 2/22/2011 2:00:00 PM HB618

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Derek Poag

Organization: Individual

Address:

Phone:

E-mail: thepoags@usa.net

Submitted on: 2/22/2011

LATE TESTIMONY

Comments:

Good bill please pass