

HB688

Testimony

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE CLAYTON HEE, CHAIR
SENATE JUDICIARY AND LABOR COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai`i

April 7, 2011

RE: H.B. 688, H.D. 2, S.D. 1; RELATING EDUCATION.

Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu submits the following testimony in support of H.B. 688, H.D. 2, S.D. 1, with comments on the proposed harassment by bullying language.

The purpose of this bill is to amend Chapter 302A, Hawaii Revised Statutes (“HRS”) to define "bullying," "cyberbullying" and "harassment" in Hawaii’s public schools. It would further require the Board of Education to monitor the Department of Education’s compliance with any administrative rules or statutes pertaining to bullying, cyberbullying and harassment. In addition, this bill proposes a new section in Chapter 711, which would define and prohibit “harassment by cyberbullying,” as a misdemeanor offense.

The Department of the Prosecuting Attorney supports the Board of Education and Department of Education in their efforts to establish specific policies against "bullying," "cyberbullying" and "harassment" in our schools. However, our primary comment regarding the proposed provisions on “harassment by cyberbullying” is that this section appears to **reiterate the harassment by stalking law** contained in HRS Section 711-1106.5, but with even more criteria required to meet the definition of “cyberbullying.”

While our department continues to actively and vigorously prosecute violent offenders, our overarching concern is public safety and welfare; this purpose is served by educating individuals on the wrongfulness of violence, and preventing violence from occurring in our community. By educating our youth about bullying, cyberbullying and harassment--and the physical/mental injury that can result from such activity--we may prevent this type of behavior from escalating to more violent acts in the future, or even prevent many children and/or teenagers from engaging in such misconduct in the first place.

In a 2009 survey done by the Department of Education of 15,000 students or 11% of the

public school students, 51% of the students continued to feel bullied and harassed and 63% agree that bullying and harassment are problems. It has been found that these behaviors have resulted in campus violence where students and teachers have been killed on campus. It has also been found that some of the shooters were victims of bullying and resorted to violence because the schools did not address the problems sooner.

For these reasons, the Department of the Prosecuting Attorney supports the passage of H.B. 688, H.D. 2, S.D. 1, and we are willing to work with all stakeholders on this important issue. Thank you for this opportunity to testify.

Thank you for allowing me to testify in support of HB688, the Safe Schools Act. I work for the Department of Health, but am testifying as a private citizen.

I am a member of DOE's Safe Schools Community Advisory Committee that worked for two years from 2005 – 2007 to develop the document *Recommendations for Addressing Harassment in Hawaii's Public Schools* that was presented to the BOE in 2007. I was appointed by the Director of Health to represent the Department of Health on this Committee.

In order to ensure that all Hawaii youth in our public schools have access to a safe and supportive environment, it is necessary to pass HB 688.

However, the current version of HB688 needs to be amended by removing the criminal section and restoring the bill it was in HB688 hd1. It is essential that the language of HB688 hd1 be restored. I support language more consistent with the hd1 version, which the BOE and DOE support and which is the substance of the Safe Schools Act.

The intent and language of the Safe Schools Act – as reflected in HB688 hd1 - reflects the BOE's policies and administrative rules and the DOE's current intentions. The definitions for bullying, cyber-bullying and harassment in this bill are almost identical to those found in Chapter 19. The recommendations of the DOE's Safe Schools Community Advisory Committee are reflected throughout the maintenance and enforcement section of the Safe Schools Act.

For the reasons stated above, I urge this Committee to pass the Safe Schools Act, HB688, with language more consistent with the hd1 version.

Thank you for your consideration.

Nancy Kern
Chair, Hawaii Safe Schools Coalition



April 7, 2011

Senate Committee on Judiciary and Labor
Chair, Sen. Clayton Hee
Vice Chair, Sen. Maile Shimaukuro

Testimony in qualified support of HB 688 HD2 SD1 Relating to Education

Pride At Work Hawai'i, as an affiliate of the Hawai'i State AFL-CIO which works to mobilize lesbian, gay, bisexual, and transgender (LGBT) workers and their supporters for full equality and to build mutual support between the labor movement and the LGBT community, strongly supports the intent of HB 688, particularly with language from HD1 restored. We believe that all students need to be able to learn and study without the threat of bullying or harassment, and that our public schools should protect and encourage diversity. As originally drafted, the bill would require the department of education to maintain, monitor, and enforce anti-bullying and anti-harassment policies and procedures to protect students. One of our major concerns with the current draft is that it chooses criminalization of those who engage in acts of bullying or harassment, rather than education and training, as HD1 emphasized.

We strongly support the bill's inclusion of language specifying that bullying includes conduct based on gender identity or expression and sexual orientation. Studies have shown that LGB youth are four times more likely to attempt suicide than their heterosexual peers, and LGBT youth reporting higher levels of at-school bullying and victimization report higher levels of substance use, suicidal thoughts, feelings and actions, as well as engaging in increased risky behaviors than their heterosexual peers and/or those who are not bullied because of their sexual orientation. A 2009 survey of 7,261 middle and high school students found that at school nearly 9 out of 10 LGBT students experienced harassment at school in the past year and nearly two-thirds felt unsafe because of their sexual orientation. Nearly a third of LGBT students had skipped at least one day of school in the prior month because of safety concerns.

Families - including families of working people - are deeply affected by their children's experiences in school. When children face harassment or bullying, additional stress and anxiety are placed on parents, many of whom are already stressed by economic conditions. Schools are also workplaces for teachers, administrators, and service personnel. Allowing bullying and harassment - or not enforcing anti-bullying policies - creates a dangerous atmosphere for these workers as well as the students, and it is time for the State to act and ensure that every effort is made to make sure it stops.

Thank you for making the time to hear this important bill.

Tod Robertson
1621 Ala Wai Blvd. #201
Honolulu, HI 96815

Senate Committee on Judiciary and Labor
Hearing: Thursday, April 7, 2011
9:30 a.m., Conference Room 016

Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, thank you for this opportunity to provide testimony in strong support of HB688 HD2 SD1, the Safe Schools Act.

Bullying is a problem in Hawaii schools as evidenced by the 2009 Youth Risk Behavior Surveillance (YRBS) System. 67.8% of Middle School students and 54.8% of High School students reported that bullying is a problem in their school. All Hawaii schools should enforce standards of conduct to discourage bullying, cyberbullying, and harassment. By our students account, we are not sufficiently addressing the problem of bullying in our public schools.

All students need and deserve a safe school environment in which to learn. Every child should go to school and not feel intimidated or bullied by others. It is our shared responsibility to ensure that every child can attend a safe public school.

Thank you for the opportunity to testify. I urge the Senate Committee on Judiciary and Labor to pass HB688 HD2 SD1.

UNIVERSITY OF HAWAII AT MĀNOA

LGBT Student Services Office

TO: Sen Clayton Hee, Chair, Senate Judiciary and Labor Committee

FROM: Camaron Miyamoto, contact person
LGBT Student Services, University of Hawai‘i at Mānoa
UH System-Wide Commission on the Status of LGBT Equality
Hawaii Safe Schools Coalition

DATE: Thursday, April 7, 2011, 9:30 am inn Conference Room 016

RE: **SUPPORT of HB 688 HD2 SD1,**
relating to bullying, cyber-bullying and harassment

Chairperson Hee, Vice-Chair Shimabukuro and Members of the Senate Judiciary and Labor Committee:

Thank you for this opportunity to testify; my name is Camaron Miyamoto. While my testimony is not the official statement of the University of Hawaii, it is directly informed by my professional experience as faculty at the University of Hawaii at Manoa, the coordinator of Lesbian, Gay, Bisexual and Transgender (LGBT) Student Services, and administrative liaison to the UH President’s Commission on the status of LGBT Equality. In addition, I am a founding member (1999)/co-chair of Hawaii Safe Schools Coalition. Our coalition continues to advocate for efforts to curtail harassment, bullying and discrimination in our schools.

As a professional who continues to work directly with students, I am gravely concerned about the negative messages that are sent from decision makers, role models or staff when their protections aren’t taken seriously, derided, criticized or even mocked. **All students in Hawaii must feel that they are worthy of being protected from discrimination on the basis of their gender identity or expression, sexual orientation, or any other of the listed protected classes in the proposed legislation.**

The most recent data from the Department of Health/Centers for Disease Control Youth Risk Behavior Survey shows that of all fifty states, students in our public schools have the worst results in relation to suicide ideation and attempts—this is directly relating to on-going harassment and bullying.

Regardless of any personal beliefs or faith traditions, I implore you to pass protections from harassment bullying and cyber-bullying for each and every one of the protected classes described in HB 688 HD2 SD1.

Please, we must not a message to our young people of Hawaii that they must leave Hawaii, or abandon public schools altogether in order to feel that they are in safe, respectful and compassionate learning environments. Please vote for safe schools for all students, please vote **IN SUPPORT of HB 688 HD2 SD1,**

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The Gay, Lesbian, Bisexual and Transgender Caucus

TESTIMONY IN SUPPORT OF HB688 WITH AMENDMENTS

DATE: Thursday, April 7, 2011
TIME: 9:30 AM
PLACE: Conference Room 016

To: The Senate JDL Committee
Senator Clayton Hee, Chair
Senator Les Ihara, Jr.

Senator Maile Shimabukuro, Vice Chair
Senator Mike Gabbard Senator Sam Slom

The Gay Lesbian Bisexual and Transgender Caucus supports the passage of HB688 – with amendments to reinstate it to the HD1 version. The Caucus is vested in this issue, because many incidents of bullying are about PERCEIVED sexual orientation. Children cannot be expected to learn, a higher-order function, when they fear for their safety, a primal function.

HB688 was originally introduced to require the Department of Education (DOE) to act on Chapter 19, a policy in place for decades. Why is HB688 needed? It is needed, because DOE fails to enforce its own policy. It leaves what we know to be a potentially life-threatening situation up to the discretion of the principal with no system-wide support, guidance, policies or procedures and no feedback as to whether the policy is being enforced. In its original form DOE was the only witness opposed to HB688. HB688 HD2 removed Section 3 – at which point DOE supported the bill! HB688 HD2 SD1. Reinstated Section 3, which is a good thing; however, it added criminal penalties for bullying, which we think is premature and excessive.

The Caucus opposes any attempt at this point to criminalize bullying. DOE should bear the responsibility for enforcing its policy – not the police. We also feel that if criminal sanctions are imposed, teachers and principals will be *less likely* to report an incident, because reporting will place the child in the criminal justice system.

If bullying persists after DOE has stepped up to its responsibility to enforce Chapter 19, it may be appropriate to consider criminal sanctions, but not at this point when there has been little or no enforcement of the policy. We want DOE (not the police) to take action on this issue. Bullying is a systemic problem within DOE. It would be far more effective if the DOE addressed the issue by educating students, faculty, staff and administration – rather than criminalizing it and thereby foist enforcement on the police.

DOE's failure to address bullying leaves the state wide open for suit, particularly since the public and the media have repeatedly brought bullying to DOE's attention. If DOE continues to turn a blind eye, the taxpayers will get stuck paying attorney fees and costs of settlement under a consent decree.

Therefore, we ask the Committee to pass HB688 HD2 SD1 with amendments to removing all references to criminalization. Our suggested amendments are both attached to our testimony and submitted separately for your consideration.

We thank you for this opportunity to testify.

Jo-Ann M. Adams, Chair

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

(2) A person ~~convicted who engages in harassment by cyberbullying~~ under this section may be required to undergo a counseling program ~~as ordered by the court.~~

~~(3) Harassment by cyberbullying is a misdemeanor and the person shall be sentenced as follows:~~

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

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

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

(43) For purposes of this section:

SUPPORT: HB688, hd1

TO: Committee on Judiciary and Labor, Sen. Clayton Hee, Chair and
Sen. Maile Shimabukuro, Vice Chair

RE: Safe Schools HB688, hd2, sd1

FROM: Dr. Patricia A. Gozemba

DATE: April 7, 2011

The issue of making schools and our community environment, in general, safe for our youth is of the utmost importance. Our goal should be to create environments that nurture the well-being of youth. To that end the Hawai'i Board of Education supports HB688, hd1. I strongly support this original bill and urge you to restore it including the seven sections of it that are deleted in the current version of the bill.

Forty-five states have adopted anti-bullying, safe schools legislation—Hawai'i is among the five that have not. We need to act now and act judiciously. I am concerned that the current version of the bill creates a *school to prison pipeline* for certain behaviors. As an educator, I believe that the schools themselves are best prepared to handle all but the most extreme acts of bullying (and these are quite minimal). I do not want to see any student's life ruined with a police record because educators were unwilling to educate about appropriate behavior.

Please, in your efforts to protect students do not endanger those in most need of education—the bullies themselves. The reasons why students bully are complex. The haste with which the proposed bill involves law enforcement makes me fear that a *school to prison pipeline* rather than effective education will be the result.

Dr. Patricia A. Gozemba 4188-1 Keanu St., Honolulu, HI 96816

pgozemba@gmail.com

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: honoluluprideparade@gmail.com
Subject: Testimony for HB688 on 4/7/2011 9:30:00 AM
Date: Tuesday, April 05, 2011 8:12:30 PM
Attachments: [HB688SenateTest](#)

Testimony for JDL 4/7/2011 9:30:00 AM HB688

Conference room: 016
Testifier position: support
Testifier will be present: Yes
Submitted by: Rob Hatch
Organization: Honolulu Pride
Address:
Phone:
E-mail: honoluluprideparade@gmail.com
Submitted on: 4/5/2011

Comments:

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: ehrhornp001@hawaii.rr.com
Subject: Testimony for HB688 on 4/7/2011 9:30:00 AM
Date: Wednesday, April 06, 2011 6:12:25 AM

Testimony for JDL 4/7/2011 9:30:00 AM HB688

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Erick Peter Ehrhorn
Organization: Individual
Address:
Phone:
E-mail: ehrhornp001@hawaii.rr.com
Submitted on: 4/6/2011

Comments:

Major reason why my parents and then my wife and I sent our children to private school was due to the threat of bullying. It may not be as serious as I think but I think it does exist. I talked with a friend yesterday and she related her story about her child being bullied in school. This should be unacceptable,

Children will not be able to learn if they are bullied. Not just the kids who are bullied will be affected. It creates a climate of fear which affects all kids.

My only concern about this bill is making it a criminal offense. I believe schools just need to exert discipline within schools instead of calling the cops all the time. Call the parents and make them sit in detention for a few hours after school. Make it known that bullying will make them ineligible to take part in sports and other extracurricular activities. I believe bullying can be drastically reduced, if not eliminated just by taking steps to stop it.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: laulani@gmail.com
Subject: Testimony for HB688 on 4/7/2011 9:30:00 AM
Date: Wednesday, April 06, 2011 6:54:27 AM

Testimony for JDL 4/7/2011 9:30:00 AM HB688

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Laulani Teale
Organization: Individual
Address:
Phone:
E-mail: laulani@gmail.com
Submitted on: 4/6/2011

Comments:

Please pass this measure. It will make a great difference in preventing trauma to many youth, and in the seriousness with which bullying is handled by the schools.

Mahal nui loa,
Laulani Teale, MPH



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

**TESTIMONY ON HOUSE BILL 688, HOUSE DRAFT 2, SENATE DRAFT 1, RELATING TO
BULLYING AND CYBERBULLYING**

**Senate Committee on Judiciary and Labor
Hon. Clayton Hee, Chair
Hon. Maile S.L. Shimabukuro, Vice Chair**

**Thursday, April 7, 2011, 9:30 AM
State Capitol, Conference Room 016**

Honorable Chair Hee and committee members:

I am Kris Coffield, representing the Imua Alliance, a nonpartisan political advocacy organization that currently boasts over 60 local members. On behalf of our members, we offer this testimony in support of HB 688, HD2, SD1, relating to bullying and cyberbullying, in its current form, with suggestions for amendments.

Recent research shows that over 50 percent of Hawaii teenagers report having been subjected to cyberbullying, either over the internet or through cellular devices. Luckily, Hawaii has yet to experience a high profile “bullicide”—suicide resulting from bullying—related to cyberbullying, like the heartbreaking passing of Missouri teen Megan Meier, in 2006, or Massachusetts high school student Phoebe Prince, in 2010, both of which resulted from prolonged harassment online. Hawaii has suffered its fair share of incidents, however, including the case of Damien Memorial School coach Doug Andrade, last October, whereby Andrade discovered that one of the school’s male cheerleaders was being bullied on Facebook, then used his daughter’s account to sling a string of verbal barbs at the alleged perpetrators of the harassment. Clearly, online content will continue to grow more sophisticated over the coming years, and something must be done to curtail the usurpation of online media for nefarious purposes before tragedy occurs.

While this bill creates the offense of harassment by cyberbullying and requires the Board of Education to monitor the Department of Education’s ensuing policy compliance, we feel that the adoption of several amendments would strengthen the measure before final passage. First, the proposed definition of cyberbullying contained in §711-(4) contains inadequately defined and confusing terms, including “sufficiently severe, persistent, or pervasive” and “intimidating, threatening, or abusive environment.” Since neither measures of sufficiency regarding severity of offenses nor environmental indicators are objectively inferred or, for that matter, enshrined in state law, we urge the committee to clarify the definition of “cyberbullying” to read: “Cyberbullying means electronically transmitted acts, whether by the Internet, cell phone, personal digital

assistance device, or any wireless hand-held device, which a person has exhibited toward another person that cause mental or physical harm, intimidate, threaten, or harass the other person. Accordingly, as pertains to section two of this draft, we encourage the committee to delete subsection (3) of the definitions of both “bullying” and “cyberbullying,” and amend subsection (2) of those definitions to state: “Cause mental or physical harm, intimidate, threaten, or harass the other student or group of students.” Finally, the definition of “bullying” contained in section two appears to combine ethnicity and national origin into a single category, while omitting age as a potential impetus for violations. Therefore, we recommend revising the definition to sanction conduct “based on a student’s actual or perceived race, color, ethnicity, national origin, sex, gender identity or expression, sexual orientation, physical or mental disability, age, religion, physical appearance and characteristic, or socio-economic status; or a student’s association with a person or group with one or more of these actual or perceived characteristics.”

Already, teachers have engaged in training to combat the rise of cyberbullying. If a comprehensive policy, like the one envisioned by HB 688, HD2, SD1, is not put in place, it is only a matter of time before misfortune strikes. Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance