

SB 237

EDT

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THE HONORABLE CAROL FUKUNAGA, CHAIR
SENATE ECONOMIC DEVELOPMENT AND TECHNOLOGY COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

February 9, 2011

RE: S.B. 237; RELATING TO CYBERBULLYING.

Chair Fukunaga, Vice Chair Wakai, and members of the Senate Committee on Economic Development and Technology, the Department of the Prosecuting Attorney, City and County of Honolulu submits the following testimony supporting the intent of S.B. 237 but have recommendations since this issue is already covered in existing law.

The purpose of this bill is to establish 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.

The department believes that it is unnecessary to create a law that is already covered in existing statute. S.B. 237 almost mirrors our harassment by stalking law, section 711-1106.5, Hawaii Revised Statutes (HRS). The difference is, this bill in its definition of “cyberbullying”, lists examples of electronically transmitted acts and the extent of the damage done to the victim: “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 causes mental or physical harm to the other person and is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive environment”.

In 2009, the Hawaii Legislature passed Act 90, which amended our harassment by stalking law, section 711-1106.5, HRS that included “transmissions, or any form of electronic communication as defined in section 711-1111(2), HRS. Section 711-1111(2) states, “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.” If the committee chooses, it can list the examples of electronic communication as shown in S.B. 237 into section 711-1111(2), HRS. For example the committee could insert: “Electronic communication includes, but is not limited to Internet, cell phone, personal digital assistance device, or any wireless hand-held device”.

Further, S.B. 237 requires the prosecuting attorney to prove that the electronically transmitted acts caused mental or physical harm to the other person and is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive environment. Our harassment by stalking statute, section 711-1106, HRS does not have this requirement. Therefore, our current law has one less hurdle for the prosecuting attorney to overcome than this bill.

Finally, our current law has stricter penalties than what is proposed in S.B. 237, which includes the following penalties:

- (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 termed 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."

Under our harassment by stalking law, section 711-1106.5, HRS, the penalty is a misdemeanor, stricter than this bill's "forty-eight hour jail sentence". We also have an aggravated harassment by stalking law under section 711-1106.4, HRS, which has a class C felony penalty when a person has been convicted previously of harassment by stalking under section 711-1106.4, HRS within five years of the instant offense, which is stricter than the second offense of "thirty days in jail" in this bill. Thus, as mentioned, our current law is stricter than the penalties proposed in S.B. 237.

For these reasons, we support the intent of S.B. 237, but encourage the committee to not pass this measure as is. If the committee moves this measure, we recommend passing the bill only with language that lists the examples of electronic communication as shown in S.B. 237 into section 711-1111(2), HRS. All other proposed language is unnecessary. Thank you for this opportunity to testify.

Jody Nakanelua

From: Ann Freed [annfreed@hotmail.com]
Sent: Wednesday, February 09, 2011 1:44 AM
To: EDTTestimony
Subject: Strong Support for SB237

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ATTN: COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY Senator Carol Fukunaga, Chair Senator Glenn Wakai, Vice Chair

Aloha Chair Fukunaga, Vice Chair Wakai and committee members,

I am in STRONG SUPPORT for SB237 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.

The internet has long since become an unsafe place for children and adults alike. This may act as a deterrent, if it is enforced and swiftly prosecuted.

Mahalo,

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