

HB1772

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-6552

KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE CLAYTON HEE, CHAIR
SENATE JUDICIARY COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

Monday, April 2, 2012

RE: H.B. 1772; RELATING TO VIOLATION OF PRIVACY.

Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 1772.

In 1999, the legislature created the offense of privacy in the first degree that included a penalty of class C felony under section 711-1110.9, Hawaii Revised Statutes, where one conducts a surveillance of another person in a stage of undress or sexual activity. The legislature excluded surveillance of another person in a stage of undress or sexual activity for the offense of violation of privacy in the second degree under section 711-1111, Hawaii Revised Statutes, and the penalty for this section is a misdemeanor.

In 2006, the legislature in a criminal omnibus bill, accidentally removed language in the offense of violation of privacy in the second degree under section 711-1111, Hawaii Revised Statutes, that excluded surveillance of another person in a stage of undress or sexual activity, thus making the language the same as the offense of privacy in the first degree under section 711-1110.9, Hawaii Revised Statutes. Since both sections have the same type of language, case law requires us to charge the lesser charge of privacy in the second degree under section 711-1111, Hawaii Revised Statutes when the facts is about a person who surveys another person in a stage of undress or sexual activity because charging the higher offense would violate due process and the equal protection of the laws. In State v. Modica, 58 Haw. 249, 567 P.2d 420 (1977), the Supreme Court of Hawaii noted, "where the same act committed under the same circumstances is punishable either as a felony or as a misdemeanor, under either of two statutory provisions, and the elements of proof essential to either conviction are exactly the same, a conviction under the felony statute would constitute a violation of the defendant's rights to due process and the equal protection of the laws."

The purpose of this bill is to amend the offense of violation of privacy in the second degree under section 711-1111, Hawaii Revised Statutes, to exclude surveillance of another person in a stage of undress or sexual activity because that conduct is already prohibited by the offense of privacy in the first degree under section 711-1110.9, Hawaii Revised Statutes. For these reasons, we strongly support the passage of H.B. 1772. Thank you.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: richard.minatoya@mauicounty.gov
Subject: Testimony for HB1772 on 4/2/2012 10:00:00 AM
Date: Sunday, April 01, 2012 3:33:58 PM

Testimony for JDL 4/2/2012 10:00:00 AM HB1772

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Richard K. Minatoya
Organization: Dept. of the Prosecuting Attorney, County of Maui
E-mail: richard.minatoya@mauicounty.gov
Submitted on: 4/1/2012

Comments:

The Department of the Prosecuting Attorney, County of Maui, supports passage of this bill and joins in the testimony provided by the Honolulu Prosecutor.