

HB 2295, HD 1

EDT

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THE HONORABLE CAROL FUKUNAGA, CHAIR
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai`i

March 16, 2012

RE: H.B. 2295, H.D. 1; 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 expressing concerns about H.B. 2295, H.D. 1.

H.B. 2295, H.D. 1, proposes to create a new offense, "Harassment by Cyberbullying"; this is essentially a single instance of what would otherwise—if done on more than one occasion—constitute Harassment by Stalking (H.R.S. §711-1106.5), so long as that single instance is by means of electronic communication. Harassment by Cyberbullying would also prohibit a single instance of "digital nuisance" upon another person, which is not addressed in Harassment by Stalking.

The Department recognizes that cyberbullying is an ongoing concern in Hawaii, and defers to the Committee regarding policy matters surrounding H.B. 2295, H.D. 1. We do note, however, it seems unusual that a single instance of 'bullying' in person would be permissible, whereas a single instance of 'bullying' via electronic communication would be criminal.

In addition, the inclusion of "digital nuisance" is of concern because it appears to criminalize behavior that has historically been a civil (not criminal) matter. Indeed, there is well-established and voluminous civil caselaw regarding libel, slander and other types of defamation (i.e. embarrassing or discrediting others), and we are not aware of any other states that have criminalized this type of activity.

For all of the reasons noted above, the Department of the Prosecuting Attorney of the City and County of Honolulu has concerns about H.B. 2295, H.D. 1. Thank for you the opportunity to testify on this matter.



Committee: Committee on Economic Development and Technology
Hearing Date/Time: Friday, March 16, 2012, 1:30 p.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii with Comments to H.B. 2295, HD1, Relating to Cyberbullying

Dear Chair Fukunaga and Members of the Committee on Economic Development and Technology:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes with comments to H.B. 2295, HD1, Relating to Cyberbullying.

While this bill is well-intended, we are concerned that it may be selectively enforced against youth because of its use of the word "cyberbullying." People of all ages can be victims of cybercrimes, so we suggest that "cyberharassment," a more encompassing term, replace references to "cyberbullying," a term commonly associated with the actions of youth. To further ensure that youth are not targeted, this Committee should consider inserting cyberharassment as a subsection of harassment in H.R.S. § 711-1106.

These amendments will help to ensure that youth are not overcriminalized as a result of this bill. An important goal of our criminal laws is to protect children, not criminalize them for poor judgment. Criminalizing our youth serves only to make it harder for youth to become productive adults and may harm their lives permanently. Victims can and should use civil courts to pursue damages against those who engage in cyberharassment.

We should all look beyond the courtroom to classrooms and living rooms to help stop cyberharassment, particularly by youth. Parents and educators should create open and honest dialogue with respect to these issues and teens should be counseled on how to respectfully use technology to interact with each other.

The ACLU of Hawaii's mission is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

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Chair Fukunaga and EDT Committee Members
March 16, 2012
Page 2 of 2

Sincerely,
Laurie A. Temple
Staff Attorney
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Daryl Selman, President

Judith F. Clark, Executive Director

Aloha House

American Civil Liberties Union of Hawaii

Assistive Technology Resource Ctrs. of HI

Bay Clinic, Inc.

Big Brothers Big Sisters of Honolulu

Big Island Substance Abuse Council

Blueprint for Change

Bobby Benson Center

Catholic Charities Hawaii

Central Oahu Youth Services Assn.

Child and Family Service

Coalition for a Drug Free Hawaii

Domestic Violence Action Center

EPIC, Inc.

Family Support Hawaii

Friends of the Missing Child Center of HI

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Behavioral Health

Hawaii Student Television

Healthy Mothers Healthy Babies Coalition

Hina Mauka Teen Care

Hui Malama Learning Center

Kahi Mohala Behavioral Health

Kama'aina Kids, Inc.

KEY (Kualoa-Heeia Ecumenical Youth)
Project

Kids Behavioral Health

Kids Hurt Too

Kokua Kalihi Valley

Kula No Na Poe Hawaii

Lanai Community Health Center

Life Foundation

Marimed Foundation

The Maui Farm, Inc.

Maui Youth and Family Services

Palama Settlement

P.A.R.E.N.T.S., Inc.

Parents and Children Together (PACT)

Planned Parenthood of Hawaii

Queen Liliuokalani Children's Center
- Kona Unit

REAL

Salvation Army Family Intervention Svcs.

Salvation Army Family Treatment Svcs.

Sex Abuse Treatment Center

Susannah Wesley Community Center

The Catalyst Group

The Children's Alliance of Hawaii

Waikiki Health Center

Women Helping Women

YouthVision

YWCA of Kauai

March 13, 2012

To: Senator Carol Fukunaga, Chair
And members of the Committee on Economic Development and Technology

TESTIMONY SUPPORTING THE INTENT OF HB 2295 RELATING TO CYBERBULLYING

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports the intent of HB 2295 Relating to Cyberbullying.

At the 2011 Children and Youth Summit, bullying was the top priority for legislative action identified by the 125 participating youth and youth advocates. It received nearly 3 times as many votes as the second priority issue. Cyberbullying was identified as one of several forms of bullying that need to be addressed.

Creating a petty misdemeanor offense for cyberbullying, however, will not be sufficient to prevent it from happening and damaging the lives of the victims. Criminal prosecution is often not the appropriate response to cyberbullying. Mediation and restorative justice approaches are to be preferred.

HYSN believes that that the Legislature should consider a more comprehensive approach to bullying prevention and intervention that includes:

- Bullying prevention education and character education designed to promote peace and harmony and positive ways of resolving disputes;
- Education for parents and community members;
- Training for teachers and school personnel on prevention and intervention skills, and alternative means of dispute resolution;
- Law enforcement involvement only when other means fail.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director

To: Senate Committee on Economic Development and Technology
Chair, Carol Fukunaga
Vice-Chair, Glenn Wakai

Good afternoon Chair Fukunaga, Vice-Chair Wakai, and members of the committee,

My name is Janelle Funtanilla and I am a graduate student in the Myron B. Thompson School of Social Work at UH Manoa. I am in support of the intent of HB 2295. As social workers we are taught to advocate on behalf of the populations that we serve, and because Child & Family is my focus in this profession, this bill has much relevance to me. We live in a time where technology gets more innovative by the minute, and people (adults and children) establish more of a presence in cyberspace. This is not necessarily negative, as it may be the only means for some people to keep connected with loved ones. However when bullying and harassment occur even online, the effects are very much seen in their real lives. Cyberbullying can affect anyone, even if they don't have an active online presence. I believe that even though this bill is not a whole solution to stop cyberbullying, if we do nothing, it is the same as us agreeing with it. I thank you for your consideration of this bill, and for the opportunity to testify.

March 14, 2012, 1:30pm, Conference Room 016

To: Committee on Economic Development and Technology
Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair

From: Tia Ikeno, Graduate Student, University of Hawaii at Mānoa, School of Social Work

Re: HB 2295 HD 1 Relating to Cyberbullying

In Support

Chairs & Committee Members:

I, Tia Ikeno, support HB 2295 for the following reasons:

Cyberbullying is worse than traditional bullying because not only does it impact those immediately involved, but through its potential “viral” reach it has the possibility of causing far more dire consequences. Unfortunately, society has become familiar with actual cases where young people commit suicide and/or murder as a result of cyberbullying. With new technologies come new societal responsibilities, and I believe it is our responsibility to make the effort to try and prevent actions that lead to such a waste of young lives, who represent the future of our community. The laws of a society should provide the framework for acceptability in online interactions, and by including cyberbullying within our penal code we can clarify the serious nature of this activity. We can then supplement and sustain the law with education, counseling, and training to teach our youth what is acceptable behavior.

I agree with the current recommendation to classify cyberbullying as a petty misdemeanor since there will likely be many first time and young offenders. Perhaps provisions may be added to address repeat offenders or classify escalation in severity as misdemeanor offenses.

Thank you for the opportunity to submit testimony.

To: Chair Fukunaga, Vice Chair Wakai, and the Committee of Economic Development and Technology

Ashley Jones, a Master of Social Work student in the Myron B. Thompson School of Social Work, submits this testimony in support of bill HB2295 HD1.

Through empirical studies and investigation, a link between thoughts of suicide and bullying experiences has been revealed. In a 2007 study, authors of *Bullying, Cyberbullying, and Suicide*, randomly selected 1,963 middle schoolers' to complete a survey detailing Internet use and experiences (Hinduja and Patchin, 2010). Victims and offenders of bullying or cyberbullying experienced more suicidal thoughts than students who did not share those experiences. Hinduja and Patchin (2010), also stated that the prevalence of attempted suicide was higher among victims and offenders who experienced bullying or cyberbullying.

According to StopBullying.gov, a government website managed by The Department of Health and Human Services, individuals who are bullied or cyberbullied suffer from preventable afflictions. These include, but are not limited to, a higher risk of anxiety and depression, decreased academic achievement, increased truancy in school or work, and a higher likelihood of retaliation through violent measures.

There is an abundance of scholarly literature that indicates the significance of cyberbullying, and the detrimental affects it can have on victims and offenders. Classifying cyberbullying as a misdemeanor is an essential step to take in order to assert the seriousness of the offense. This classification serves as a reminder to children, parents, educators and law personnel, to be aware of one's intent of Internet use. It serves as a reminder that cyberbullying will have repercussions and consequences. By supporting this bill, citizens of the State of Hawaii will be reminded, cyberbullying is a crime.

COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair

HB 2295, HD1

DATE: Friday, March 16, 2012

TIME: 1:30pm

PLACE:

Conference Room 016

State Capitol

415 South Beretania Street

My name is Barbara Sun and I am a current student at UH testifying in supporting the intent of HB 2295 with some amendments.

Cyber-bullying is an indeed a important topic that requires assertive strategies in tackling this issue on multiple levels. Cyber-bullying can have short-term and long-term psychological effects on students' academic learning (Misha, Cook, Saini, Wu, & MacFadden, 2011). Students who were "cyber-bullied" reported feelings of sadness, anxiety, fear, and inability to concentrate in one study (Beran & Li, 2005, 2007 as cited by Misha, Cook, Saini, Wu, & MacFadden, 2011). Also, the CDC reported in 2008 recognized cyber-bullying as an emergent health risk to students (as cited in Borgia & Myers,2010). It was reported in the Youth Internet Safety Survey that depression, substance use, and delinquency are significantly higher among youth who report being bullied or sexually solicited online (as cited in Misha, Cook, Saini, Wu, & MacFadden, 2011).

To have a comprehensive type of intervention is necessary. Mitigation through law has its limitations with first amendment rights and it is important to stress the incorporation of other strategies such as promoting literacy activities and creating awareness in preventing cyber-bullying and Internet safety. A study in Illinois found "60% of the 394 teachers surveyed support literacy activities as a tool for awareness to prevent bullying and cyber-bulling, yet only 15% were aware of preventing this behavior in their classroom" (Borgia & Myers, 2010). I also suggest looking towards educational programs such as the "I-Safe" cyber safety program or the "Missing" program for prevention and awareness in Internet safety and cyber-bullying.

During my undergrad at UH, I remember the fear faced by one female student in my class. She was emotionally distressed as she was continually stalked and harassed online by a male. At the time there was very limited protection for her. I do believe the law has a role in society and needs to be updated with the changes in forms of communication. I am in support of this bill intended to tackle cyber-bullying on the legal end but believe it should tackle this predicament in an age appropriate way. I believe minors of certain age should have other forms of awareness implemented in the school setting that involves mediation and educational counseling prior to legal action.

Thank you for your time.

Sincerely,

Barbara Sun

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References:

Mishna, F., Cook, C., Saini, M., Wu, M., & MacFadden, R. (2011). Interventions to prevent and reduce cyber abuse of youth: a systematic review. *Research on Social Work Practice*. 21(1) 5-14

Borgia, L.G., Myers. J. J., (2010). Cyber safety and children literature: A good match for creating classroom communities. Illinois Reading Council Journal. 28 (3), 29-34