



## 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**



Friday, February 3, 2012, 2:00 p.m.

RE: H.B. 2295: Relating To Cyberbullying

Chair Keith-Agaran, and members of the committee:

This measure would create a new criminal offense of harassment by cyber bullying. Essentially, any harassment committed by electronic transmission acts which are intended to embarrass, humiliate, impersonate or discredit another person would constitute the offense of harassment by cyber bullying.

While we believe that the emotional harm caused by the dissemination of personal information of an individual, true or false, via the internet or wireless cellular communication can be as harmful as offensive physical contact or face-to-face insults, taunts or challenges, we do not believe that it should be classified as a misdemeanor offense. 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 harassment by cyber bullying 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.

The definition of cyber bullying in this measure is overbroad, and could have unintended results. For example, if someone posted a funny video on Facebook or Youtube of an eating contest at a school fair, did that person commit the offense of harassment by cyber bullying if one of the contestants is embarrassed or humiliated by the posting of the video?

If this legislature is intent on passing a cyber bullying law, we ask that the language be tightened up to specifically define the offense as a direct act intended to harass, annoy or alarm another person. We believe that the word embarrass, is too broad and subjective to be included in a harassment statute. We also believe that rather than creating a new offense, cyber bullying can be inserted as a subsection of harassment in section 711-1106, Hawaii Revised Statutes. We also believe that the punishment should be consistent with the offense of harassment, which is a petty misdemeanor.

We oppose H. B. 2295 in its current form. Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
Twenty-sixth State Legislature  
Regular Session of 2012  
State of Hawai'i

February 3, 2012

**RE: H.B. 2295; RELATING TO CYBERBULLYING.**

Chair Keith-Agaran, Vice Chair Rhoads and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony supporting the intent of, but expressing concerns about, House Bill 2295.

Although the Department recognizes that cyberbullying is an ongoing concern in Hawaii, H.B. 2295 appears to duplicate offenses already prohibited under current law. In particular, Harassment by Stalking (H.R.S. §711-1106.5) is nearly identical to the proposed offense, and explicitly prohibits "pursuit, surveillance, or non-consensual contact upon another person...without legitimate purpose," where there is "intent to harass, annoy or alarm" that person. The only difference is that Harassment by Stalking requires more than one instance of such conduct. As defined in H.R.S. §711-1106.5(3), "non-consensual contact" does include any form of electronic communication, including electronic mail transmission.

In addition, Harassment by Impersonation (H.R.S. §711-1106.6) already prohibits the unauthorized impersonation of another person, when transmitting personal information by any electronic means, where there is "intent to harass, annoy or alarm" that person. If a defendant is convicted of Harassment by Stalking or Harassment by Impersonation, our courts currently have the ability to require counseling as part of a defendant's sentencing.

Although we note that the proposed offense also prohibits electronic communications used to "embarrass, humiliate...or discredit" another person, these terms seem to create unnecessary confusion or conflict about the intent that is to be proven, where it is already established that the defendant must have had an "intent to harass, annoy, or alarm." Moreover, matters of embarrassment or discrediting others have historically been a matter for civil—rather

than criminal—law, and there is well-established and voluminous civil caselaw regarding libel, slander and other types of defamation.

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. Thank for you the opportunity to testify on this matter.

# HAWAII YOUTH SERVICES NETWORK

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Web site: <http://www.hysn.org> E-mail: [info@hysn.org](mailto:info@hysn.org)

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 Kalihī 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

February 1, 2012

To: Representative Gilbert Keith-Agaran, Chair  
And members of the Committee on Judiciary

## 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 criminal 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.

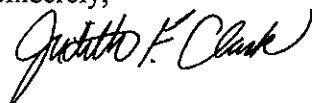
HYSN believes that that the Legislature should consider a more comprehensive approach to bullying prevention and intervention that includes:

- 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.

Senator Chun Oakland convened a work group that spent 3 months carefully crafting a comprehensive bullying bill (SB 2596 Relating to Education). HYSN believes that SB 2596 provides a more effective approach to bullying than HB 2295.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH  
Executive Director

Testimony for HB2295 on 2/3/2012 2:00:00 PM

## Testimony for HB2295 on 2/3/2012 2:00:00 PM

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

**Sent:** Friday, February 03, 2012 8:31 AM

**To:** JUDtestimony

**Cc:** breaking-the-silence@hotmail.com

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Testimony for JUD 2/3/2012 2:00:00 PM HB2295

Conference room: 325  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Dara Carlin, M.A.  
Organization: Individual  
E-mail: breaking-the-silence@hotmail.com  
Submitted on: 2/3/2012

**Comments:**

Good Afternoon Representatives and thank you for this opportunity to provide testimony. I am in support of this measure but would like to make a suggestion.

Does anyone remember the Megan Meier case? (The "My Space" case that called the nation's attention to cyberbullying when a former friend, her mother AND other adults created a fake boyfriend for Megan over the internet? Then in a final act of cruelty they mocked her that led to Megan's suicide minutes later as a result?

What I would like to suggest is that language be added to this measure to fortify the consequences of cyberbullying, for example, Missouri law (where Megan's case originated) "increases the penalty for harassment from a misdemeanor to a felony, carrying up to four years in prison, if it's committed by an adult against someone 17 or younger, or if the criminal has previously been convicted of harassment." Prior to this, Missouri's baseline for "violations of the ordinance are treated as misdemeanors, with fines of up to \$500 and up to 90 days imprisonment". That the court MAY require someone convicted under this statute to undergo a counseling program is hardly any justice for the victim and/or his/her family. As a result of what happened in Megan's case, her parent's marriage fell apart - of course the perpetrators didn't intend for Megan to kill herself or for the family to fall apart as a result - but don't you think they should've known better? What they did was NOT an overnight, one time thing - it was a sustained event that had lethal consequences.

Cyberbullying is a serious crime and it needs to be treated as such in order for those who may be tempted to think twice about engaging in it. As you will hear in other measures presented this session, the police and prosecution are already struggling to catch computer-savvy criminals because of how quickly these people are able to manipulate the computer environment. Please give this legislation the strength that it needs to effectively do its job.

Testimony for HB2295 on 2/3/2012 2:00:00 PM

**Testimony for HB2295 on 2/3/2012 2:00:00 PM**

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

**Sent:** Wednesday, February 01, 2012 1:50 PM

**To:** JUDtestimony

**Cc:** toddhairgrove@hotmail.com

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Testimony for JUD 2/3/2012 2:00:00 PM HB2295

Conference room: 325  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: Todd Hairgrove  
Organization: Individual  
E-mail: toddhairgrove@hotmail.com  
Submitted on: 2/1/2012

Comments:

Testimony for HB2295 on 2/3/2012 2:00:00 PM

**Testimony for HB2295 on 2/3/2012 2:00:00 PM**

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

**Sent:** Thursday, February 02, 2012 11:21 AM  
**To:** JUDtestimony  
**Cc:** kypineisacrook@gmail.com  
**Attachments:** What\_Good\_Are\_New\_Laws\_Wit~1.pdf (1 MB)

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Testimony for JUD 2/3/2012 2:00:00 PM HB2295

Conference room: 325  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Eric Ryan  
Organization: Citizens Against Crooked Politicians  
E-mail: kypineisacrook@gmail.com  
Submitted on: 2/2/2012

Comments:

Testimony for HB2295 on 2/3/2012 2:00:00 PM

**Testimony for HB2295 on 2/3/2012 2:00:00 PM**

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

**Sent:** Thursday, February 02, 2012 4:17 PM

**To:** JUDtestimony

**Cc:** bsager42@gmail.com

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Testimony for JUD 2/3/2012 2:00:00 PM HB2295

Conference room: 325  
Testifier position: Support  
Testifier will be present: No  
Submitted by: William Sager  
Organization: Individual  
E-mail: bsager42@gmail.com  
Submitted on: 2/2/2012

Comments:

Cyber-bullying is serious. Over half the teens in Hawaii have reported being cyber-bullied. Teens throughout the country have been driven to suicide. Go here for more information.  
<http://www.hawaiinewsnow.com/Global/story.asp?S=13516322>

Policy and teachers throughout the state are trying to deal with the problem. Internet safety is an important subject. HB2295 will give them an important tool to fight cyber-bullying.