



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 2472, RELATING TO SEXUAL IMAGES PRODUCED BY MINORS.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Monday, February 6, 2012 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to address the problem of "sexting," which involves minors taking nude pictures and videos of themselves or other minors, and transmitting the nude images to others by use of a cell phone or other form of electronic communication. This bill prohibits adults from soliciting minors to electronically transmit nude images of minors, prohibits minors from electronically transmitting nude images of themselves or other minors, or soliciting other minors to do so; prohibits minors and adults from possessing a nude image transmitted by a minor; and makes it an affirmative defense that the recipient made reasonable efforts to destroy the transmitted nude image.

The electronic transmission of youth-produced sexual pictures and videos, frequently referred to as "sexting," is a growing problem with our children, especially because the images, once transmitted electronically, can be shared with many people almost instantaneously. Once transmitted, the original transmitter has very limited ability to control or prevent further dissemination. Often, the images are intended for the minor's "significant other." Sometimes, the images are being transmitted to an adult who has convinced the minor to make the images and send them to the adult. But regardless of the reason the images were created, or to whom they were sent to originally, the images frequently get disseminated to others, especially after the relationship has deteriorated, or a cell phone is lost, misplaced, stolen, or improperly accessed. The images may be used as a commodity for exchange. The threatened dissemination of such

images may also be used as leverage against the subject to make the subject engage in certain conduct.

In this age of electronic connectivity, the images can instantaneously be shared with many people and can cause great embarrassment and mental or emotional harm to the subjects of the images. The unwanted dissemination has resulted in suicides in other states.

Our current State laws do not specifically prohibit "sexting" conduct. While our laws prohibit the dissemination of child pornography, the nude images transmitted through "sexting" behavior often do not qualify as pornography.

This bill is intended to address concerns of parents and school officials and make it clear to minors that the dissemination of nude images of themselves and other minors is harmful and inappropriate behavior that will not be tolerated. The bill will assist parents and school officials in addressing the problem with minors. It will also be a tool for law enforcement agencies to use to try to stop the harmful and inappropriate behavior.

We respectfully request passage of this bill.



Committee: Committee on Human Services
Hearing Date/Time: Monday, February 6, 2012, 8:30 a.m.
Place: Room 329
Re: Testimony of the ACLU of Hawaii in Strong Opposition to H.B. 2472,
Relating to Sexual Images Produced by Minors

Dear Chair Mizuno and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii writes in strong opposition to H.B. 2472, which seeks to make “sexting” by minors a misdemeanor offense.

According to a 2010 poll by AP and MTV, nearly 25% of teens have engaged in sexting. While the ACLU does not condone the practice, the purpose of child pornography laws is to protect children, not criminalize them for poor judgment. Criminalizing them would only serve to stigmatize them, make it harder for them to become productive adults and potentially harm their life permanently. Victims can and should use civil courts to pursue damages against those who distribute their images without their permission.

Besides sweeping more children into the criminal justice system, this bill may also be unconstitutional in that it may criminalize expression protected by the First Amendment. ACLU of Pennsylvania recently won litigation in a sexting suit where the DA had tried to charge teens with a felony for taking pictures of themselves and sending them to male students via their cell phones.¹

We should all look beyond the courtroom to classrooms and living rooms to help stop sexting. 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 in order to protect themselves and others. For all these concerns, we respectfully ask this Committee to hold this measure.

The mission of the ACLU of Hawaii 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-

¹ *Miller v. Skumanick*, 605 F. Supp.2d 634 (2009). Available at: <http://www.aclupa.org/downloads/MillerTROorder33009.pdf>.

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Rep. Mizuno, Chair, HUS Committee
and Members Thereof
February 6, 2012
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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.

Sincerely,

Laurie A. Temple
Staff Attorney

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Testimony for HUS 2/6/2012 8:30:00 AM HB2472

Conference room: 329

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: 2/6/2012

Comments:

Good Morning Representatives ~

I just wanted to make a suggestion/clarification because (to me) the way this reads is that a MINOR who takes a nude photo of himself/herself and transmits it will be guilty of a misdemeanor. I was thinking that for minors, the term "status offense" would be more appropriate over "misdemeanor".

Penalties for adults who know better should be strict and harsh but for kids who SHOULD know better (but don't) this just seems a little heavy-handed. While any kid should know that engaging in such an action is wrong, he/she may not have been "taught that lesson".

My suggestion would be to leave the adult portion of this bill as-is but for minors, make it a kind of "3 strikes you're out" kind of thing under "status offense" so for a first offense, there'd be counseling; a second, community service and a third (hopefully the lesson would be learned the first time around though) detention and treatment (because if a kid is persisting in such behavior despite the consequences, you've got a serious problem going on).

The problem I see is that a minor with a first offense isn't the same as a minor with a third offense and while we want to end this kind of behavior altogether, transmitting these kind of images is just so supported in the mainstream media at the moment that if this bill is put into effect as-is, the police are going to be much busier than they already are.

The other thing is that for minors, status offenses are "wiped away" crossing into adulthood and while an expungement is certainly possible, for a kid who got caught doing something stupid once, a misdemeanor labeling is a heavy burden. Until we as adults can role model more appropriate behavior ourselves (ie: celebrities and those in the public spotlight taking inappropriate pictures of themselves and distributing) I just think a misdemeanor label for a minor is a bit severe. Otherwise I completely support the intent of this measure.

Thank you for your time and consideration.