

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 8:43 PM
To: EDTTestimony
Cc: Brenda.Kosky@gmail.com
Subject: Testimony for SB2104 on 2/3/2012 2:30:00 PM

Testimony for EDT 2/3/2012 2:30:00 PM SB2104

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Brenda Kosky
Organization: Individual
E-mail: Brenda.Kosky@gmail.com
Submitted on: 2/2/2012

Comments:
Strongly agree!

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 4:34 PM
To: EDTTestimony
Cc: kathyh@kathyhancock.com
Subject: Testimony for SB2104 on 2/3/2012 2:30:00 PM
Attachments: SB2104 testimony.doc

Testimony for EDT 2/3/2012 2:30:00 PM SB2104

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Kathleen Hancock
Organization: Individual
E-mail: kathyh@kathyhancock.com
Submitted on: 2/2/2012

Comments:

I will submit a second file with proposed amendments ASAP.

SB2104 Testimony on Cyber-harassment

For over a year, I have been subjected to repeated harassment through electronic communications. The primary means of harassment were blog and message board postings in the form of derogatory, defamatory, pornographic, violent and psychologically traumatizing cartoons and commentary. (More than 80 cartoons, too many posts and comments to count). I was not the only target of this abuse, but I was the only one willing to try to engage the justice system as a way to end it.

I have had much opportunity to observe the inadequacy of the current harassment statutes to protect Hawai'i's internet users from deliberately abusive attacks, and would be very willing to answer any specific questions the legislature may have. It is not my intent to get into the details of my case in this testimony, but I do wish to speak to the way the failure of the statutes caused a rebound effect on myself as one who filed a complaint.

Stated in order that I encountered problems, not ranked by severity:

1) I filed the complaint under HRS 711-1106 one year ago. My first problem was that the police in my county are not allowed to go online to view content, even when the content happens to be the material evidence. It was an incredibly clunky process that I, the victim, had to monitor the sites, make copies, pay for the color copying and printing, and hand carry it into the police station. I had to do this many many times. In the meantime, I became so disturbed that I had to get therapy. My therapist advised trying to avoid this material. However, the police could not investigate online, so I had to do all that for them, and had to repeatedly expose myself to more trauma in order to proceed with the case. My therapist says that this harassment has put me in a state of PTSD (except it is not POST trauma, it is continuing trauma).

2) A number of the officers do not understand the nature of social media and online interaction. There should be at least one person in the department who is capable of dealing with cyber crimes, and there was not in my case. I had an excellent investigating officer, but she was much limited by the rules I mentioned, and my discussions with other officers were not as fruitful due to their lack of understanding of what was involved. They themselves have no experience with cyber-community, and were not at all equipped to understand it.

3) By filing a complaint, I was forced to give my full real name to the person harassing me. He knew me by a regular username (aka screen name), which is a common layer of privacy adopted by internet users to protect themselves from abusers who might reach out to their work, home, and so forth to hurt them. My username was recognizable to those who know me, and in this case consisted of my real first name and the initial of my surname. However, my harasser did not know my surname until the police gave it to him. In retaliation for filing the complaint, he then published my full real name on a message board. He also published a series of cartoons mocking the very idea that cyber postings might be considered harassment.

4) A blogger named Damon Tucker, who considers himself a bit of a mogul of social media in Hawai'i and is a personal friend of the Respondent, made the harassment case into a news story. The theme of the story was that it was an abuse of the police process to open a case for cyber harassment from a local blogger. Although Damon redacted my name in his blog post, he linked to the original message board where my full name was at the top of the post, and to a very derogatory, humiliating cartoon.

Damon Tucker then tweeted his blog story to his 6,000 or so followers. As a result, my name and involvement in this complaint went to thousands of people, all because I had dared to fill a police complaint.

While Thomas Lackey, the harasser, is generally malicious towards me, Damon Tucker seemed genuinely misguided about what is protected freedom of speech and protection. If the law had been clear in this area, if it were known to people what is and is not legal behavior, I think a great deal of what happened to me could have been deterred.

5) Other retaliation that was taken against me for filing a complaint included threats to escalate the harassment, which did occur. After I filed for a TRO, my harasser posted my full name, address, legal signature, and other personal information on his blog for everyone to see. The cartoons became cruder, lewder, and began to attack not only myself but my aged parents and husband. People in my life who were looking for me, searched for my name and were perturbed to come up with a blog containing sadomasochistic drawings, which alarmed them.

A journalist who tried to cover the story was deterred by the psychological abuse she received for showing an interest (she was depicted bound, gagged, raped, sodomized).

Her attempts to file a harassment complaint failed because the cyber-harasser changed her hair color and only used her first name, although it was clear in context to whom these violent and perverted drawings referred.

6) Moving on to the prosecution's burden, they had problems with the definition of what constituted "contact." The definition of "electronic communication" did not clearly include the internet. Two prosecutors who looked at the statute did not catch the Commentary below the statute stating the findings of the 2009 legislature on how harassment by electronic means can be just as severe as in person or telephone harassment. I had to point this out. This commentary was never brought into the actual text of the statute, and its status as law appears to be unclear.

7) The Deputy Prosecuting Attorney of Hawaii County Mitch Roth contacted me for an assessment of how Hawai'i law could be brought on a footing with cyber-harassment laws in other states. I also submitted comments to Senator Green's office, after they contacted me.

SUMMARY

The Legislature has a duty to the people of Hawai'i to write laws that can be prosecuted according to the standards of practicality employed by the Prosecutor's Office. A victim of cyber-harassment risks a lot by filing, and those who have seen what happened to me don't want to step forward, lest it happen to them. They see that I got no help, no intervention, no justice, only escalation.

If there is to be a statute that criminalizes cyber-harassment, which I feel should definitely be the case, it MUST be clear. It must address the peculiarities of this social environment, such as the use of pseudonyms to protect privacy. It must put a mandate on the police to investigate, and give them the ability to do so. Lastly, the language must be clear enough for the prosecutor's office to be willing to charge the case. The penalties should be stronger as well, certainly for patterns of abuse.

Please keep in mind that cyber abuse is sociopathic psychopathic behavior. Those who seriously engage in such actions directed at specific individuals are taking pleasure in torture. That it can be cloaked in defenses such as it is meant to be humorous or that a person with a username is not a real person and can therefore not feel distress -- all that increases the pleasure derived by the sociopath, and adds to the frustration and pain of the victim. The sociopath is able to be cruel and tormenting while still maintaining -- "I never touched her" -- and can get away with it. The fact that this all unfolds publicly on the internet makes it even worse than email or texts or phone calls. There is the feeling of being virtually raped in public with no one willing to lend a hand or cry foul. My life will never be the same.

Unquestionably, our youth need protection from cyber-bullying, but so do our other citizens. Our senior citizens, our disabled, those who cannot afford attorneys to bring civil suit, all need protection from cyber predators. The person harassing me is a senior citizen himself; the internet is for all ages now. Please act to keep this wonderful tool for community, communications, and information a benign force in our lives rather than a tool for sociopathic cruelty.

Sincerely yours.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 03, 2012 7:01 AM
To: EDTTestimony
Cc: kathyh@kathyhancock.com
Subject: Testimony for SB2104 on 2/3/2012 2:30:00 PM

Testimony for EDT 2/3/2012 2:30:00 PM SB2104

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Kathleen Hancock
Organization: Individual
E-mail: kathyh@kathyhancock.com
Submitted on: 2/3/2012

Comments:

Proposed Amendments to SB2104 on Harassment:

see attached file. I was asked to comment on this bill by Senator Green's office in its draft stage, and have spent much time this last year analyzing the wording of the Harassment statutes. I feel strongly that the amendment needs some strengthening re the standard for emotional distress, and there is a lack of continuity throughout the three related harrassment statutes that needs to be addressed.

Finally, I feel that the matter of pseudonyms should be addressed when it comes to the definition of "specific person" in cases of cyber-harassment and stalking, for example, the legislature could look to defamation law and its attitude towards pseudonyms, which recognizes that a person is a person and the name is only part of what constitutes recognizability.

It is extremely common for electronic communications to be made by and towards persons employing usernames, and this should be addressed in order to avoid confusion when charging these offenses.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 03, 2012 7:10 AM
To: EDTTestimony
Cc: kathyh@kathyhancock.com
Subject: Testimony for SB2104 on 2/3/2012 2:30:00 PM

Testimony for EDT 2/3/2012 2:30:00 PM SB2104

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Kathleen Hancock
Organization: Individual
E-mail: kathyh@kathyhancock.com
Submitted on: 2/3/2012

Comments:
Resubmitting after getting a file path error:

Proposed Amendments to SB2104 on Harassment.

(g) Makes any form of electronic communication, as defined in section 711-1111(2), including electronic mail transmissions, that is directed at a specific person and causes emotional distress to that person and serves no legitimate purpose."

The proposed addition lacks a "reasonable person" standard for the emotion distress.

Example: 604-10.5 clause: "provided that such course of conduct would cause a reasonable person to suffer emotional distress." Numerous states use a reasonable person standard to avoid challenges to the law that it fails to use an objective standard. Laws in other states have been struck down for language that is too broad.

Other Harassment statutes:

I do not think that 711-1106 should not be amended in a vacuum. There are three harassment statutes, which should all be amended to include "electronic communications:

604-10.5 Power to enjoin and temporarily restrain harassment: the TRO statute is cross-referenced with 711-1106, but not does not mention e-communications.

711-1106.5 Harassment by stalking: commentary addresses 2009 legislative session's resolution re electronic communication, the same as with §711-1106, but in both statutes, the electronic communications additions was not incorporated into a subsection of the actual statute. It is going to be problematic and uneven to amend one statute but not the others. The legislature should consider 711-1106 and 711-1106.5 side by side and decide exactly what offenses each is meant to include. Is 711-1106 meant to cover an isolated instance of cyber-harassment, whereas 1106.5 addresses repeated acts? Realistically, most cyber-harassment that is intended to cause a person emotional distress will fall into a pattern of repeated acts.

Here are the comparable clauses from the three harassment statutes relating to causation of emotional distress:

604-10.5 Power to enjoin and temporarily restrain harassment.
(a) For the purposes of this section:

"Course of conduct" means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose.

"Harassment" means: An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

711-1106 (g) Harassment (proposed)

communication, as defined in section 711-1111(2), including electronic mail transmissions, that is directed at a specific person and causes emotional distress to that person and serves no legitimate purpose."

711-1106.5 Harassment by stalking.

(1) A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of conduct involving pursuit, surveillance, or nonconsensual contact upon the other person on more than one occasion without legitimate purpose.

(3) For purposes of this section, "nonconsensual contact" means any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued.

Should not 711-1106.5 have an emotional distress provision as well?

Here are the current statements re "electronic communication" in the three statutes:

604-10.5 has none.

711-1106 has a note in the Supplemental Commentary as follows:

"Act 90, Session Laws 2009, amended subsection (1) by including any form of electronic communication within the scope of the offense. The legislature found that harassing or insulting electronic communications are a form of harassment that can be just as severe or punishing as other verbal communications or offensive contacts. Senate Standing Committee Report No. 1242, Conference Committee Report No. 10."

711-1106 already includes any form of electronic communication:

"Nonconsensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or any form of electronic communication, as defined in section 711-1111(2), including electronic mail transmission."

The question has been, does 711-1111(2) define electronic communication clearly to include contact through internet postings and other social media? It is important that the definition of contact by e-communication be clarified.

711-1106.5 has a note in the commentary clarifying that "contact" by electronic communication is harassment. 711-1106.5 focuses on contact, whereas 711-1106 sticks to communication. How are these two things different when it comes to electronic communications?

Commentary for 711-1106.5:

"Act 90, Session Laws 2009, amended subsection (3), clarifying the definition of "nonconsensual contact" to include contact by means of any form of electronic communication. The legislature found that harassing or insulting electronic communications are a form of harassment that can be just as severe or punishing as other verbal communications or offensive contacts. Senate Standing Committee Report No. 1242."

When I filed a harassment complaint for repeated acts, it probably should have been taken under 711-1106.5, stalking, but instead the police used 711.1106, which caused numerous

problems as it pinned my complaint to a single time frame when it went to the prosecutor's office, which was wrong. The relationship between these two statutes needs to be clarified so that police know which one to use.

In sum, the 2009 amendment discussed in Commentary and Supplemental Commentary need to be incorporated into the actual statute, and the inclusion of electronic communication should be extended to the TRO statute. I filed for a TRO, but the lack of specific mention of electronic communications put the judge in a position where he did not know if he could include them, even though the harassment was primarily through such communications.

The legislature already found that e-communications may constitute "nonconsensual contact" as defined in subsection 3 of 711-1106.5, so why is it not cross-referenced to 604-10-5? I really don't understand why they don't make these amendments to the definitions apply across the board to all of the harassment statutes.
Thank you for your attention to this matter.

January 31, 2012

Testimony of

Kuulei Galloway

before the

Senate Committee of Economic Development and Technology

Friday, February 3, 2012

2:30pm

State Capitol, Conference Room 016

in consideration of

SB 2104

Relating to Harassment

Good afternoon Chair Fukunaga, Vice Chair Wakai, and committee members.

As a concerned citizen, parent, and social worker, I am writing in SUPPORT of SB 2104, relating to harassment.

We live in an age of technology. Our children are born into a world where their understanding of technology is a necessity. Technology has advanced to a point where we are more connected with the rest of the world than we have ever been. We can meet new people, connect with old friends, and conduct personal or professional business with the click of a mouse. The development of technology has changed our relationships with one another in incredible ways.

Unfortunately technology also has its downfalls. You can find out virtually anything on the internet. Our addresses, phone numbers, and other personal information can be easily retrieved. Our children do not understand that everything they post on the internet is permanent and can have serious repercussions. There are predators constantly scanning the web to find innocent victims they can prey on.

Those downfalls are the reasons we need protections. I am not saying in any way that the internet should be censored, but that since the internet has become a new way of communication, that avenue of communication should also have the same protections as communicating face to face.

I work with high risk adolescents. I understand that being connecting as a teenager is so important to them. It's no longer just being connected to one another in school or by a telephone; they now have cell phones, text messages, emails, Skype and the popular social media websites. The problem is that as

teenagers, they don't always think before they act. They also do not understand how easily what they say on the internet can affect another person.

Social media websites like Facebook can help our kids stay connected even when they are not together, but they can also cause a lot of problems. There has been a lot of bullying, fighting, threatening, and harassment that occurs on these websites. There has even been evidence of children committing suicide because of harassment that occurs over the internet.

As adults, we need to teach our children that it not ok to bully or harass other people. Bills like this one will help protect both children and adults from individuals who believe that transmitting negative messages over the internet is acceptable. This bill will help people to understand that even with advances in technology, our rights as citizens are still protected.

I support senate bill 2104. Thank you for hearing my testimony.

Kuulei Galloway

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