



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 Senate Committee on Judiciary and Labor**

February 22, 2012, 9:45 a.m.

LATE TESTIMONY

RE: S.B 2222, SD 1: Relating To Sexual Images Produced By Minors

Chair Hee and Members of the Committee:

This measure would criminalize the act of sending nude images by minors of themselves to another person via electronic communication, as well as the possession of said indecent material by another person. It also prohibits the solicitation of nude images of a minor by an adult.

The Office of the Public Defender opposes S.B. 2222, SD 1.

While we agree that minors are particularly vulnerable to exploitation and harassment by others using the Internet and other electronic means of communication, we do not believe this measure to be the solution to the problem.

If a minor is taken advantage of by an adult and enticed to send a nude photo of them to that adult, that adult should be prosecuted and punished. The minor, however, would also be subject to prosecution under this bill. The minor, in this instance, should be treated like a victim, not a criminal. In other instances, a boyfriend or girlfriend may be innocently sending racy photos to one another. In either circumstance, we do not believe that the minor's act should be criminalized.

Subsection (2) of this measure criminalizes the possession of a nude picture or video of a minor sent by that minor via electronic communication. We have several concerns about subsection (2).

First, the nude photo sent by a minor to another minor may be inadvertently forwarded to an adult's email account, either by accident, or as part of an automatic forwarding system, like Facebook, where a person can post a picture of another by "tagging" that person, whose image will be forwarded to Facebook "friends" and/or friends of "friends." If the adult does not check their email account regularly, or logs onto their Facebook account infrequently, they may "possess" a nude picture of a minor sent by a minor without their knowledge. How do they then explain why they did not take reasonable steps to destroy or delete the photos soon after it was received?

Second, a seventeen-year-old boy and his eighteen-year-old girlfriend may exchange nude pictures with each other by electronic means. Under this measure, the boy would be prosecuted as a law violator in the family court, and the girl would face prosecution as an adult for a class C felony.

Finally, if a minor takes a picture of themselves with a cell phone, e-mails it to his internet account, downloads the picture to his computer, prints the photo, places it in an envelope and mails it to his girlfriend, he has not committed a crime.

Again, we believe that if the intent of this measure is to prevent exploitation of minors by adults, this measure should directly address the problem, rather than criminalizing the victims.

We oppose S.B. 2222, SD1. Thank you for the opportunity to comment on this bill.

hee6 - Dinna

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2012 1:24 AM
To: JDLTestimony
Cc: hulamex@hotmail.com
Subject: Testimony for SB2222 on 2/22/2012 9:45:00 AM

LATE TESTIMONY

Testimony for JDL 2/22/2012 9:45:00 AM SB2222

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Arviella Benavides
Organization: Individual
E-mail: hulamex@hotmail.com
Submitted on: 2/22/2012

Comments:

As a mother of five school aged children and an educator, no one (be it adult or minor) should have the privledge to take nude picture and post at will without being punished by law. I support this bill without ammendments.