

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 3:52 PM
To: JUDtestimony
Cc: anne.e.lopez@hawaii.gov
Subject: Submitted testimony for HB622 on Jan 29, 2013 14:00PM
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HB622

Submitted on: 1/28/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Anne	Department of Attorney General	Comments Only	Yes

Comments: Deputy Attorney General Deirdre Marie-Iha will be attending the hearing on HB 622.

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Late

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

**ON THE FOLLOWING MEASURE:
H.B. NO. 622, RELATING TO EVIDENCE.**

**BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY**

DATE: Tuesday, January 29, 2013 **TIME:** 2:00 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Deirdre Marie-Iha, Deputy Attorney General

Chair Rhoads and Members of the Committee:

This bill would make the journalists' shield law permanent. The journalists' shield was originally enacted by Act 210 in 2008, with a sunset date of 2011. The sunset date was later extended to 2013. The journalists' shield allows professional journalists to keep their sources confidential, and thus promotes public access to more information. To the extent the journalists' shield applies to professional journalists and their sources, the Department of the Attorney General does not object to making the law permanent. Beyond that, however, the Department has some significant concerns about the existing wording in Act 210, Session Laws of Hawaii 2008, including provisions that make the shield law unduly expansive.

We therefore respectfully urge the Committee to use this bill to amend Act 210, Session Laws of Hawaii 2008. We suggest four specific amendments: (1) omit the provision that extends the protections beyond professional journalists to non-traditional journalists and bloggers, (2) add an exception for defendants in criminal cases who have a constitutional right to the information, (3) omit the provision extending the shield to unpublished information that is not reasonably likely to lead to the identification of the source, and (4) clarify that the privilege would shield a person from contempt of court or other consequences only when the provision is validly invoked. These amendments would remove potentially problematic aspects of the journalists' shield law, and better tie the provision to the protection of confidential *sources*, which is the primary aim of journalists' shield laws.

unless the unpublished information were protected. The protection of all unpublished information is therefore overbroad, and subsection (a)(2) should be omitted.

Fourth, the final paragraph of the shield law intends to protect those who validly invoke it from contempt or other fines imposed by a court. As currently written, however, subsection (d) is ambiguous; it leaves the impression that just invoking the privilege (even if wrongly invoked) shields a person from contempt of court or fines. But of course the person must be legally entitled to the privilege before the shield provision should apply. A short amendment, inserting the word "validly," will correct this potential ambiguity. With this amendment, the last subsection would read "No fine or imprisonment shall be imposed against a person validly claiming the privilege pursuant to this section for refusal to disclose information privileged pursuant to this section."

We respectfully ask this Committee to amend the journalists' shield law with the recommend changes listed above, before making it permanent.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phones/E-Mail: (808) [533-3454](tel:533-3454), (808) [927-1214](tel:927-1214) / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon Har, Vice Chair

Tuesday, January 29, 2013

2:00 p.m.

Room 325

STRONG SUPPORT FOR HB 52 - EVIDENCE

Aloha Chair Rhoads, Vice Chair Har and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 622 Makes permanent the limited news media privilege against the compelled disclosure of sources and unpublished sources.

Community Alliance is in strong support of this measure that upholds the First Amendment.

Thirty-nine state and the District of Columbia currently have shield laws and the Student Press Law Center has described Hawai'i's law as "the best in the country in terms of the clarity and breadth of its coverage." Our law has been cited as a model for a national shield law.

The Judiciary Evidence Committee has reviewed the law as requested by the Legislature and it recommended that "the sunset provision be eliminated and that Act 210 be integrated into HRS Chapter 621.

Please pass HB 622. Mahalo for this opportunity to testify.

"Let the people know the facts, and the country will be safe."

Abraham Lincoln