

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Judiciary**

S.B. No. 2185 HD1 Proposed: RELATING TO VIOLATION OF PRIVACY

Hearing: June 29, 2020, 2:00 p.m.

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Public Defender respectfully opposes in part and supports in part H.B. No. 2185 HD1 Proposed.

Violation of Privacy

Part I of this measure would prohibit defendants originally charged with the offenses of Violation of Privacy in the First Degree and certain sections of Violation of Privacy in the Second Degree.

The courts should be allowed to maintain their discretion on a case-by-case basis to grant deferral in these types of cases. Courts cannot exercise this discretion without meeting the requirements of H.R.S. § 853-1, which provides, in pertinent part:

(1) When a defendant voluntarily pleads guilty or nolo contendere, prior to commencement of trial, to a felony, misdemeanor, or petty misdemeanor; (2) It appears to the Court that the defendant is not likely to engage in a criminal course of conduct; and

(3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, without accepting the plea of nolo contendere or entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceedings.

If this measure passes, defendants originally charged with these charges under §711- 1110.9 and various subsections in §711-1111 (misdemeanor) would be prohibited from requesting a deferral of their charges. As stated in HRS Chapter 853, the trial court, after considering the merits of the case, and hearing from the prosecutor, may or may not grant a defendant’s motion to defer the proceedings. In order for the trial court to defer the proceedings, it must find that the defendant is not likely to re-offend or engage in a (further) course of criminal conduct, and that the ends of justice and welfare of society do not require the defendant receive a criminal conviction.

Because of this high standard, not all requests by defendants to defer their criminal proceedings are granted by the trial courts. Defendants must still be deemed worthy of a deferral. Criminal history, seriousness of the offense, history of substance abuse, lack of employment, and previous

criminal behavior (even if uncharged) are common reasons cited to by prosecutors and judges for a denial of a defendant's motion to defer the acceptance of his or her guilty or no contest plea.

Why is it important that some defendants receive deferrals of their criminal proceedings? A criminal conviction follows an individual for the rest of his/her life. It will impact his/her ability to seek and maintain employment and to receive government benefits. *A remorseful first-time offender who is youthful, immature, remorseful and is not likely to re-offend should be allowed, in limited circumstances, to be given the opportunity for a second chance -- a chance to avoid a criminal conviction.* Police officers, soldiers, government and private sector employees may lose their jobs if they receive a criminal conviction.

Moreover, the possibility of requesting a deferral -- a chance to avoid a criminal conviction -- is a particularly enticing reason for a defendant to waive his right to a trial and enter a plea. Without the possibility of a deferral, a defendant is more likely to elect a trial. Defense attorneys weigh the strength of their case versus the strength of the State's case in determining whether or not to recommend trial. The likelihood of obtaining an acquittal, favorable verdict, or an improved position for sentencing are factors that defense attorneys consider in deciding to recommend a trial or plea. Without a deferral, defendants will often take their chances at trial. And even when a deferral is granted, a defendant must still comply with conditions in order to earn the possibility of expunging their record.

Finally, the Office of the Public Defender is unaware of any significant case statistics that indicate that the courts are inordinately granting deferrals in these kinds of cases.

Part II: Face Surveillance

Part II of this measure seeks to ensure that the legislature can properly vet future uses of the rapidly evolving technology and prevent unintended consequences from interfering with the privacy and freedom of Hawai'i residents, by placing limits on the government's use of face surveillance.

The rapid development and proliferation of facial recognition technology and recent evaluations of this technology have been a seriously cause for concern. This accuracy of this technology has yet to be fully vetted and is highly dependent on the accuracy of the data entered into the software or algorithms used by each system. We are deeply concerned about the very real biases that these systems have yet to protect against -- racial bias, gender bias and age bias. The technology has yet to reach the sophistication to check for or eliminate systematic problems with these types of biases and there are far too many instances of false positives to render the technology as reliable unless images entered into the system are clear, unblurred, and still. Many images, whether still or moving, may be blurred, grainy, and under circumstances where poor lighting, awkward angles, or partial images are captured.

We agree that "until the technology matures and proper protections are put in place, the legislature finds further uses of face recognition technology should be vetted and approved by the legislature." (see page 7, lines 13-16).

We also submit for your review and consideration two recent articles on facial recognition technology that support our concerns:

- National Institute of Standards and Technology, NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software (December 19, 2019) (<https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>) (last visited, February 8, 2020)
- Valerio-DeVries, Jennifer, The New York Times, How the Police Use of Facial Recognition, and Where It Falls Short (January 12, 2020) (<https://www.nytimes.com/2020/01/12/technology/facial-recognition-police.html>) (last visited, February 8, 2020)

Finally, the dangers, concerns and potential abuse of facial recognition technology by law enforcement and private companies are brilliantly and entertainingly discussed in a segment on HBO's Last Week Tonight with John Oliver, which originally aired on June 15, 2020, and which can be viewed at <https://www.youtube.com/watch?v=jZjmlJPJgug> (viewer discretion advised).

Thank you for the opportunity to present testimony to this committee.



Hawai'i

Committee: Committee on Judiciary
Hearing Date/Time: Monday, June 29, 2020, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawai'i with comments regarding S.B. 2185, Proposed H.D. 1, Relating to Privacy

Dear Chair Lee, Vice Chair San Buenaventura, and Committee Members:

The American Civil Liberties of Hawai'i ("ACLU of Hawai'i") **writes with comments regarding** S.B. 2185, Proposed H.D. 1. Part 2 of the bill seeks to place limits around government use of facial recognition technology ("FRT"). Comments provided in this testimony pertain to Part 2 of the proposed draft.

The ACLU of Hawai'i generally supports restricting government use of FRT, but has concerns about subsection 2(b), which we request be stricken entirely. Alternatively, the ACLU of Hawai'i proposes that the Committee insert language, outlined below, to ensure that FRT used by the government does not carry racial or gender bias, and that the Committee insert a sunset date for subsection 2(b) of December 31, 2021. Amended, S.B. 2185, proposed H.D. 1, would safeguard Hawaii's residents against dangerous, invasive, and biased systems that threaten civil rights and safety. **Unamended, the exemptions greenlight the continued use of this technology by law enforcement against the people of Hawai'i.**

Subsection 2(b) should be stricken entirely or amended to prevent racial or gender bias in policing and given a sunset date.

Honolulu Police Department (HPD) adopted this technology without *any* meaningful community input. Existing use by HPD is consistent with what would be allowed under subsection 2(b)(1)¹ which can lead to prejudicial misidentification and is, alone, problematic.² Further, earlier this month, Hawai'i Department of Transportation (DOT) announced that it would be installing facial recognition cameras in all major Hawai'i airports to assist with screening arrivals for COVID-19. Like HPD, the State moved forward with this plan without any community input and with little transparency as to how this technology would be adopted and whether its use would continue beyond

¹Honolulu Police Department Policy Auxiliary and Technical Services, Policy Number 8.21, September 14, 2015, <https://www.honolulu.org/information/pdfs/FacialRecognitionProgram-02-04-2016-12-19-14.pdf>.

² See, Kashmir Hill, *Wrongfully Accused by an Algorithm*, New York Times (June 24, 2020) <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>. Detroit Police Department's policy for use of FRT is similar to what is allowed pursuant to subsection 2(b)(1) of SB 2185, proposed H.D. 1, and could lead to a similar wrongful arrest in Honolulu.

the COVID-19 pandemic. FRT is not necessary or even effective in screening for COVID-19, and the ACLU of Hawai'i sent a letter to the Governor on June 19, 2020 detailing our concerns.³

The costs of this technology to civil rights and liberties substantially and categorically outweigh any benefits. **For this reason, the ACLU of Hawai'i urges the Committee to strike subsection 2(b), which allows law enforcement and DOT to continue use of FRT.** We should not reward the State and counties' lack of transparency in their adoption of this technology by grandfathering existing use into FRT regulations. If the Committee is inclined to retain parts of subsection 2(b), we ask that, a minimum, the Committee make the following amendments:

1. Insert the following language into the bill to ensure that government use of FRT pursuant to subsection 2(b) does not carry racial or gender bias:
"The permissible uses provided for in subsection 2(b) shall only be allowed where the face surveillance technology or the face surveillance system from which the information is obtained has been demonstrated, through independent testing, to produce no greater rates of false positive identifications for any class of persons protected by the constitutions and laws of the United States of America and State of Hawaii."
2. Amend subsection 2(b)(3) to make explicit the prohibition on sharing data collected through FRT cameras.
3. Insert a sunset date of December 31, 2021 for subsection 2(b).

Fourth Amendment and First Amendment rights are at stake, especially for communities of color and women.

One of the companies DOT is considering partnering with for its FRT airport program, NEC, was shown to have racial bias in its programs and its use by Detroit Police Department led to the misidentification of a Black man who was arrested for a crime he did not commit.⁴ A 2019 study by the National Institute of Standards and Technology found increased rates of inaccuracy in FRT programs when used on women and people of color. Another study, conducted by the ACLU of Northern California, reveals that FRT marketed to law enforcement mistakenly matched the faces of one out of five lawmakers with images from an arrest photo database. More than half of the falsely identified are lawmakers of color, illustrating the most dangerous risk of FRT. A similar ACLU test conducted in 2018 also misidentified 28 sitting members of Congress. An identification — whether accurate or not — could cost people their freedom or even their lives.

³ Yoohyun Jung, *Face Scanners At Hawaii Airports Are 'Terrifying,' ACLU Says*, Honolulu Civil Beat (June 24, 2020), <https://www.civilbeat.org/2020/06/face-scanners-at-hawaii-airports-are-terrifying-aclu-says/>.

⁴ Hill, *supra*.

The powerful and automated nature of FRT means that law enforcement could track every move a person makes and follow them as they go to work, attend church, go to the doctor, drop their children off at school, attend a political rally, etc. As a result, FRT can have a real chilling effect on people's willingness to engage in civic duties, participate in religious events, or engage in free speech. Abused, this technology can be used on a massive level to target and retaliate against political protestors.⁵

Other jurisdictions have adopted similar laws to protect their residents.

In May 2019, the city of San Francisco became the first city to prohibit government acquisition and use of FRT. Since then, the cities of Oakland, Berkley, Somerville, Cambridge, and Boston have introduced and adopted similar legislation. More cities and states are beginning to understand the dangers and concerns of FRT and more will soon follow. Recently, the State of California successfully enacted a landmark law that blocks law enforcement from using FRT on body cameras.

It is integral that privacy protections keep up with technological advancements to ensure that the State of Hawai'i continues to uphold our explicit constitutional right to privacy. We must reclaim control of our information; for when privacy is at stake, free speech, security, and equality will soon follow. For this reason, the ACLU of Hawai'i requests that the Committee amend this measure to prevent the continued, unchecked use of this dangerous and biased technology.

Thank you for the opportunity to testify.

Sincerely,



Mandy Fernandes
Policy Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

⁵ Siddiqui and Ulmer, *India's Use of Facial Recognition Tech During Protests Causes Stir*, Reuters (February 17, 2020), <https://www.reuters.com/article/us-india-citizenship-protests-technology/indias-use-of-facial-recognition-tech-during-protests-causes-stir-idUSKBN20B0ZQ>.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Chris Kalani Lee, Chair

Rep. Joy San Buenaventura, Vice Chair

Tuesday, June 30, 2020

9:46 am – Room 016

COMMENTS: SUPPORT FOR LIMITING FACIAL RECOGNITION - SB 2185 HD1

Aloha Chair Lee, Vice Chair San Buenaventura and Members of the Committee!

I hope this finds you and your `ohana well during these challenging times...a true test of our resilience!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of all the people who are currently under the 'care and custody' of the state here and abroad, all those who died in the state's 'care', and we are always mindful that more than 1,100 of Hawai'i's imprisoned people are serving their sentences thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far from their ancestral lands.

Community Alliance on Prisons is deeply concerned with the loss of privacy and the increased surveillance of the community. The Constitution has enshrined the rights of the people to assemble and to petition the government. The Electronic Frontier Foundation - <https://www EFF.org/pages/face-recognition> describes face recognition:

"Face recognition is a method of identifying or verifying the identity of an individual using their face. Face recognition systems can be used to identify people in photos, video, or in real-time. Law enforcement may also use mobile devices to identify people during police stops.

But face recognition data can be prone to error, which can implicate people for crimes they haven't committed. Facial recognition software is particularly bad at recognizing African Americans and other ethnic minorities, women, and young people, often misidentifying or failing to identify them, disparately impacting certain groups.

Additionally, face recognition has been used to target people engaging in protected speech. In the near future, face recognition technology will likely become more ubiquitous. It may be used to track individuals' movements out in the world like automated license plate readers track vehicles by plate numbers. Real-time face recognition is already being used in other countries and even at sporting events in the United States."

We are increasingly concerned with recent statements from law enforcement that highlight the "Us v Them" mentality and HPD testimony that supports keeping information that could hurt the public under wraps to protect their employees. HPD used the LRADs (Long Range Acoustic Device) in recent community protests. Hawai'i doesn't need military warriors;

WE NEED GUARDIANS OF THE PUBLIC!

Mahalo for this opportunity to testify.

Presentation to The
Committee on Judiciary
June 29, 2020 2:00 P.M.
State Capitol Conference Room 325

Testimony With Comments on SB 2185, Proposed HD 1

TO: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eight Hawaii banks and two banks from the continent with branches in Hawaii.

Earlier, in this session, HB 2745 on Face Surveillance was brought before this Committee. The Hawaii Bankers Association objected to HB 2745 because banks are required under federal law to maintain the ability maintain video records of activity in a banking office. Accordingly, this Committee amended HB 2745 to assure that banks could continue such activity.

We believe that the intent of proposed HD 1 was not to prevent banks from engaging in video activity that is required by federal law and to clarify the language and assure banks that such is the case, the proposed HD 1 should be amended to clarify that banks are not subject to the proposed HD 1. Section -2(a) provides that it shall be unlawful for the government or any government official engage in face surveillance but then the proposed HD 1 goes on to say in section -2(b), that a face surveillance system or information obtained from a face surveillance system “shall **only** (emphases added) be obtained, retained, shared, accessed, or used . . . (1) by a law enforcement agency personnel . . (2) by driver’s license and civil identification card . . (3) by the government or a government official . . .” The language in section -2(b) says that banks cannot use face surveillance system, as required by federal law, to combat criminal activity, such as bank robbery or fraud.

Accordingly, that section -2 be amended by inserting a new section -2(b)(4) that reads as follows:

“Section -2(b)(4) (4) Nothing in this chapter shall be construed to prohibit private entities from using face surveillance and face surveillance system for security related purposes; provided that any information collected from face surveillance and a face surveillance system used for security related purposes may be sold, shared, leased, traded, or otherwise profited from only to the government or government official.”

The foregoing language would clarify that banks can continue to comply with federal banking law.

Thank you for the opportunity to submit this testimony with comments to SB 2185, proposed HD 1. Please let us know if we can provide further information.

Neal K. Okabayashi (524-5161)



Testimony to the House Committee on Judiciary
Monday, June 29, 2020, 2:00 pm
State Capitol, Room 325

Comments on SB 2185 proposed SD1 – Relating to Violation of Privacy

To: The Honorable Chris Lee, Chair
The Honorable Joy San Buenaventura, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state.

We offer the following comments with regards to SB 2185 proposed HD1, Relating to Violation of Privacy. As currently written, “face surveillance” would encompass any security camera currently in use, such as those used in financial institutions and ATM machines. Security camera systems in financial institutions are extremely important, as they help to prevent robberies, or can assist law enforcement if a robbery has occurred.

As such, we agree with the amendments proposed by the Hawaii Bankers Association.

Thank you for the opportunity to provide comments on this issue.

June 27, 2020

S.B. 2185 (HD1 Proposed) Relating To Violation of Privacy
Committee: Senate Committee on Judiciary
Hearing Date/Time: Monday, June 29, 2020, 2 p.m.
Place: Conference Room 325, State Capitol, 415 South Beretania Street

Dear Chair Lee and members of the House Committee on Judiciary:

I write in **support** of S.B. 2185 Relating To Violation of Privacy.

As a privacy expert, I have worked in the field of data privacy for over 15 years and am a member of the 21st Century Privacy Law Task Force, created in 2019 by the legislature in H.C.R. 225.

The Proposed HD1 version of this bill addresses facial surveillance, an important area of emerging technology which is already in active use on the mainland and limited use here in Hawaii. This technology is currently entirely unregulated.

One fact that I hope you keep in mind when considering this bill, is the huge racial disparities that exists in the current technology. The National Institute of Standards and Technology (NIST) found the false positive rate of facial surveillance for African-American, Asian, and native groups (which include Native American, American Indian, Alaskan Indian and Pacific Islanders) is 10 to 100 times higher than Caucasians. The rate of false positives is even higher for women than for men. We should be very cautious to rely on a technology that has serious flaws for the majority of the citizens of Hawaii.

On the other hand, as the bill documents, this technology is currently being used responsibly by the Hawaii Police Department and this limited use should not be curtailed.

In my opinion, this bill seeks to strike the right balance between a citizen's right to privacy in the Hawaii Constitution and the need for public safety and security in an increasingly digital world. This balance is sorely needed while the accuracy of this technology is still being improved and while best practices for acceptable use are still being defined.

Thank you for your consideration and the opportunity to support this legislation.

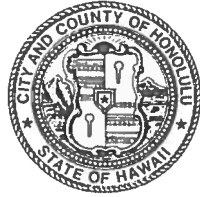


Kelly McCanlies
Fellow of Information Privacy, CIPP/US, CIPM, CIPT
Member, 21st Century Privacy Law Task Force



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DEPUTY CHIEFS

OUR REFERENCE RP-KK

June 29, 2020

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

LATE

Dear Chair Lee and Members:

SUBJECT: Senate Bill No. 2185, Proposed H.D. 1, Relating to Violation of Privacy

I am Randall Platt, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Part I of this bill; however we raise strong concerns and provide recommendations to Part II with regards to the face surveillance.

Part I of this bill addresses the unauthorized, surreptitious recording of a person in a state of undress or participating in a private sexual act as a criminal violation of a person's right to privacy. The release of or the threat to release such recordings or images can cause irreparable personal, professional, and financial harm. Excluding Violation of Privacy in the First Degree and certain paragraphs of Violation of Privacy in the Second Degree from qualifying for deferred acceptance of guilt or nolo contendere pleas holds the perpetrators accountable for their actions and provides a deterrent for a repeat offense. The HPD is in full support of adding subsections 1 (13) (AA) and (BB) to Section 853-4 of the Hawaii Revised Statutes.

With regard to the use of face surveillance systems in Part II of this bill, it is the HPD's position that imposing blanket restrictions on the use of face surveillance technology for law enforcement is premature. Face surveillance technology remains an emerging, developing field, and its full impact and potential have yet to be realized.

The Honorable Chris Lee, Chair
and Members
June 29, 2020
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A broad, blanket restriction would negatively impact law enforcement's ability to consider and utilize technological advancements and future applications of face surveillance technologies, particularly in the areas of rapid identification and tracking of suspects during public safety emergencies and exigent circumstances.

The HPD provides the following recommendations to Part II of this bill:

1. We request that Section 2 (b) (1) (A) include the Federal Bureau of Investigation's (FBI) Next Generation Identification database. The HPD currently utilizes and relies on this database for out-of-state offenders. We recommend the subsection be amended as follows: "To compare surveillance photographs or videos to arrest booking photographs from the Hawaii criminal justice data center; the Federal Bureau of Investigation's Next Generation Identification database; or . . . "; and
2. While the HPD is absolutely committed to protecting the civil rights and liberties of citizens and visitors, we also recognize that there are situations in which the use of face surveillance could prove critical to public safety in certain emergency circumstances such as active shooter or terrorist incidents. We therefore request that subsection (C) be added to Section 2 (b) (1) as follows: "In an exigent circumstance in which there is a need to identify individual(s) who pose a significant threat or may cause imminent harm to others."

Accordingly, the HPD supports Part I and urges you to consider our concerns and recommendations for Part II of Senate Bill No. 2185, Proposed H.D. 1, Relating to Violation of Privacy.

Thank you for the opportunity to testify.

Sincerely,



Randall Platt, Captain
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

LATE

June 29, 2020

RE: S.B. 2185, PROPOSED H.D. 1; RELATING TO VIOLATION OF PRIVACY.

Chair Lee, Vice Chair San Buenaventura, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony **expressing concerns for Part 2** while **strongly supporting Part 1** of S.B. 2185, proposed H.D. 1.

Part 2 of S.B. 2185, proposed H.D. 1 is derived originally from H.B. 2745 of the 2020 Legislative session. The purpose of this part is to protect the privacy of Hawaii residents by placing limitations on facial surveillance to prevent possible unintended consequences from the rapidly evolving technology. The Department expresses concern regarding the limitations placed on law enforcements use of arrest booking photos. Currently on page 10, line 9-11, law enforcement is limited to only booking photos from the Hawaii Criminal Justice Data Center. **This provision severely limits the use of other valuable databases in Hawaii, but more importantly databases obtained and managed by the Federal Government and from other states that are routinely used to assist in criminal investigations.** The Department would suggest expanding the language of this provision to ensure that law enforcement have the proper tools to properly investigate crimes that may be committed against Hawaii residents by individuals who may not live and reside in our state.

The purpose of Part 1 of S.B. 2185, is to exclude certain types of Violation of Privacy from being eligible for deferred pleas. Generally speaking, deferred pleas allow someone to “put off” entering an official plea for a specific length of time—commonly known as the deferral period—during which time they have to meet certain terms and conditions set by the court (e.g. remain arrest-free and conviction-free, etc); the length of the deferral period varies, based on the severity of the offense. If the defendant abides by all terms and conditions of their deferral, through the end of their deferral period, then the case will be dismissed and no conviction will

ever appear on the person's record (for that particular offense). This is essentially an opportunity for someone to show the court that they have "learned their lesson"—even without a formal conviction—and will not reoffend; each person is typically allowed only one deferred plea in their lifetime. Depending on the individual, a deferral could be used to keep a person's criminal record totally clean, or it could be used to keep a felony off of their record, or for other reasons.

Section 853-4, Hawaii Revised Statutes ("HRS"), explains the process and parameters of getting a deferral, and also lists specific offenses for which deferral is not allowed (e.g. abuse of family or household member, solicitation of prostitution, all class A felonies, etc). If enacted, S.B. 2185 would add Violation of privacy in the first degree (HRS §711-1110.9) and certain portions of Violation of privacy in the second degree (HRS §711-1111(d)(e)(f)(g) and (h)) to that list, thus prohibiting deferral on these offenses.

Please keep in mind, these particular offenses are much more than simple "peeping Tom"-type violations of privacy, and generally involve affirmative steps by the offender—sometimes using audiovisual devices or other instrumentation—to observe, record, amplify and/or broadcast other people's intimate activities, private communications, or intimate areas of the body, without consent from those depicted, under circumstances in which there would be a reasonable expectation of privacy. Victims of these types of offenses are often left with long-lasting negative effects, which may be even more egregious if there was any dissemination or online posting of these images or communications. Given the very serious nature of these offenses, the Department does not believe they should be eligible for deferral; perpetrators should not be afforded the privilege of keeping these types of offenses off their record.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu expresses concern for Part 2 while strongly supports Part 1 of S.B. 2185, proposed H.D. 1. Thank you for this opportunity to testify.