

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 and Hawaiian Affairs**

February 23, 2021

H.B. No. 169: RELATING TO DISORDERLY CONDUCT

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. 169 and offers comments for the committee’s consideration. This bill creates an unnecessary subsection for behavior that can be prosecuted under several existing statutes. Furthermore, by creating a subsection directed primarily at adolescents making statements on social media, this bill unfairly stigmatizes students and funnels them into the school-to-prison pipeline.

Our most crucial concern is that this bill will stigmatize and criminalize adolescents who need help, not to be dragged into the juvenile justice system. This bill appears to be directed at posts made on an adolescent’s social media pages, which often seek to shock or draw others’ attention. Students making such posts lack a true understanding of the seriousness and permanence of posts made on the internet. We should be seeking to increase the mental health and diversion resources available to students rather than seeking to get the courts involved at such an early stage.

This bill is predicated on the belief that the Hawai‘i Revised Statutes do not criminalize making a false or misleading threat, but that is simply not the case. There are several full misdemeanors that already cover the situation envisioned by H.B. No. 169:

It is illegal to “intentionally make[] a report or cause[] the transmission of a report to law-enforcement authorities” under HRS § 710-1015 (false reporting to law enforcement authorities).

It is also illegal to “knowingly cause[] a false alarm of fire or other emergency to be transmitted to or within . . . any [] government agency, . . . that deals with emergencies involving danger to life or property” under HRS § 710-1014 (rendering a false alarm).

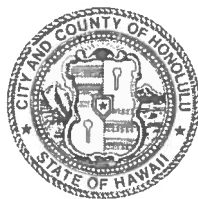
An individual could also be charged with the offense of Terroristic Threatening in the 2nd Degree (a misdemeanor) under HRS § 707-717 if they “threaten by word or conduct, to cause bodily injury to another person or serious damage or harm to property . . . of another or to commit a felony: in reckless disregard of the risk of terrorizing, another person; or . . . the risk of causing evacuation of a building[] [or] place of assembly.” *See also* HRS § 707-715. Indeed, terroristic threatening may occur even if the threat was never communicated to the person against whom the threat was made. *See State v. Alston*, 75 Haw. 517, 865 P.2d 157 (1994). Therefore, if an individual communicates a threat against an educational facility on a social media post, that individual is subject to prosecution for terroristic threatening.

By creating a petty misdemeanor offense for actions currently covered under misdemeanor statutes, this bill subjects those misdemeanor statutes to legal challenges based on misuse of prosecutorial discretion. Any of the above statutes could seemingly be used to prosecute an individual who “engages in [] conduct with an intent to convey false or misleading information” indicating “that an activity has taken, is taking, or will take place that could result in death, bodily injury, or property damage”. *See* H.B. No. 1732 at 2-3. Hawai‘i courts have a three-part test to determine whether this situation creates a risk of unbridled prosecutorial discretion: “(1) whether defendant's alleged conduct is punishable under either of two statutory provisions; (2) whether the elements of proof essential to conviction under the statutes are exactly the same; and (3) whether the punishment for the offense with which the defendant was charged or convicted is greater than the punishment for the alternative offense.” *See State v. Sasai*, 143 Hawai‘i 285, 296, 429 P.3d 1214, 1225 (2018) (citing *State v. Modica*, 58 Haw. 249, 567 P.2d 420 (1977)). Given these ripple effects, HB No. 1732 is likely to jeopardize prosecutions for the acts it seeks to address and prevent.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McARTHUR
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE **MK-KK**

February 23, 2021

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 169, Relating to Disorderly Conduct

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

The HPD supports House Bill No. 169, Relating to Disorderly Conduct.

Currently, the Hawaii Revised Statutes does not criminalize the making of false or misleading threats. Previously, the HPD would initiate a terroristic threatening case but would not be able to substantiate the offense due to the "true threat" criteria.

The HPD supports the amendments to the offense of disorderly conduct, which include engaging in conduct with the intent to convey certain false or misleading information. This amendment would help address suspects who make false threats of violence or destruction, and the effects those actions have on educational facilities and law enforcement resources. The HPD will have valuable tools to enforce the law and to hold the suspects accountable for their actions.

The HPD urges you to support House Bill No. 169, Relating to Disorderly Conduct, and thanks you for the opportunity to testify.

APPROVED:

Sincerely,

Handwritten signature of Susan Ballard in black ink.

Susan Ballard
Chief of Police

Handwritten signature of Mikel Kunishima in black ink.

Mikel Kunishima, Captain
Criminal Investigation Division

HB-169

Submitted on: 2/23/2021 11:35:38 AM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Duane Sosa	Individual	Oppose	No

Comments:

Aloha!!!

My name is Duane Sosa. I am humbly submitting testimony in OPPOSITION to HB169. I am hopeful that this Legislation will NOT pass.

Mahalo!!!

HB-169

Submitted on: 2/23/2021 11:39:07 AM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Brizee	Individual	Oppose	No

Comments:

i strongly oppose this bill

HB-169

Submitted on: 2/23/2021 11:44:29 AM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Heidi McKeague	Individual	Oppose	No

Comments:

I oppose this bill and so should you. Disorderly conduct should hold its own category. There has been an extreme attack on our right of freedom of speech and blatant censorship of truth in the media and online that "misleading or untruthful information" may actually be in fact true facts that are being deleted from the public view to create an uninformed society that doesn't know left from right or up from down anymore. Let's keep it simple and focus more on the media owned by a few billionaires, corporations and big business lying to us.

HB-169

Submitted on: 2/23/2021 11:52:13 AM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Kerr	Individual	Oppose	No

Comments:

I strongly oppose this bill!

We should never let the government tell its citizens (We ThePeople) what is considered "misleading or misinformation", or to be able to site us for such. We don't expect to be punished for *any* speech. We have a **Bill of Rights** protecting free speech and we expect you, our representatives to protect that right as well as our right to free association and assemble.

HB-169

Submitted on: 2/23/2021 11:55:42 AM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
golde wallingford	Individual	Oppose	No

Comments:

"engaging in conduct with the intent to convey certain false or misleading information." Who exactly defines what is false and misleading information? This is just another way to strip people of their right to express an opinion that may be different than an opinion of someone else. This is completely against our constitutional rights. This bill is another horrendous way to strip us of our freedoms and liberties. I completely oppose this bill.

HB-169

Submitted on: 2/23/2021 12:06:09 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chantel Durelli	Individual	Oppose	No

Comments:

As citizens we have the RIGHT to protest non-violently what we believe is WRONG in our government. Our first ammendment rights will soon be stripped away if bill HB169 passes. Furthermore, the homeless aren't always menances to society, sometimes they are just like you or I who gave up & had nothing to fall back on, especially during superemely hard times like these.

HB-169

Submitted on: 2/23/2021 12:23:48 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jennifer carman	Individual	Oppose	No

Comments:

It's tyrannical to continue supporting bills that

completely violate our birth rights and our constitution.
there are some ignorant idiots on the planet, but

they are still protected by their birth rights and the constitution.
Activism and protesting in an orderly non violent

way is something that is fully supported and required

especially when government has overreached way beyond their legal and moral codes

HB-169

Submitted on: 2/23/2021 12:47:30 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mara Stevens	Individual	Oppose	No

Comments:

I strongly oppose HB 169 as it infringes upon our Constitutional Freedom of speech and right to peacefully protest. Please oppose HB 169.

Thank you,

Mara Stevens

HB-169

Submitted on: 2/23/2021 12:48:33 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
brett sherwood	Individual	Oppose	No

Comments:

I oppose this bil

HB-169

Submitted on: 2/23/2021 12:51:45 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rebecca Miller	Individual	Oppose	No

Comments:

Aloha,

I am submitting testimony strongly opposing this tyrannical bill. Who gets to decide what is misleading information? This violates freedom of speech and villifies anyone who's fact based opinion is other than that sanctioned by the government.. I don;t know how anyone could think this bill would hold up in a free society. Please re-read the constitution and remember your oath of office to uphold it. To serve as a public servant does not mean to jail citizens for expressing an opinion. Who will hold these essential workers responisble if they abuse their power, charging people with felonies on a whim? It could easily happen if there are no repercussions. We still live in America. But with bills like this we will rapidly become a communist state.

Rebecca Miller

HB-169

Submitted on: 2/23/2021 1:22:25 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna Weber	Individual	Oppose	No

Comments:

I **oppose** HB169.

Thank you and Aloha,

JOANNA WEBER

HB-169

Submitted on: 2/23/2021 1:29:29 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christina Kohr	Individual	Oppose	No

Comments:

I strongly OPPOSE this measure. This country acknowledges our God-given right to demonstrate. Don't support any bills that subvert this country and its Constitution.

HB-169

Submitted on: 2/23/2021 1:47:01 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kristen cosmi	Individual	Oppose	No

Comments:

I oppose this bill. This bill directly goes against our freedom of speech. So, and I quote from the bill, "any conduct with the intent to convey false or misleading information" will be punishable. Who gets to say what false or misleading information is???? You guys turning into facebook with all their censorship?! It sounds to me like we'll have to accuse every leader of hawaii under this bill because us residents are constantly being bombarded with "false and misleading information" regularly from our elected leaders around the topic of covid-19. We are an informed, educated public and we will not be subjected to only your version of the "truth." We all have the right to an opinion and to voice that opinion. YOU DO NOT GET TO TAKE THAT AWAY FROM US IN ANY SITUATION. This bill is in violation of our rights. Period.

HB-169

Submitted on: 2/23/2021 2:03:55 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Craig Dansie	Individual	Oppose	No

Comments:

I oppose HB169. Who will determine what is “false and misleading information”? Facebook fact checkers? Will this throw cold water on people's freedom of speech? When real crimes are committed in high places, will it cause people to not want to speak up because they are afraid a “Facebook fact checker” could put them in jail?

Vote NO on HB 169.

HB-169

Submitted on: 2/23/2021 2:05:15 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cheri Ann Kukahiko	Individual	Oppose	No

Comments:

STRONGLY OPPOSE

HB-169

Submitted on: 2/23/2021 2:56:25 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
paula johnson	Individual	Oppose	No

Comments:

Stongly oppose Bill HB169

HB-169

Submitted on: 2/23/2021 3:42:44 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Estelle Cruse	Individual	Oppose	No

Comments:

Right to protest is a basic a constitutional right. People are allowed to write whatever they want on a poster and share it with the world. That is what our constitution guarantees. False or misinformation is just an opinion, how would one even prove that?

Please do the right thing and stand up for our constitutional rights!

HB-169

Submitted on: 2/23/2021 3:56:34 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
DARLYNE	Individual	Oppose	No

Comments:

ARE YOU SERIOUS? Do any of you watch the news?? EVERYONE is being censored and people DO NOT LIKE IT!! Now... you are going to try and make the WHOLE STATE of Hawaii to operate JUST LIKE Facebook?

WHO... (really...EXACTLY WHO) gets to decide what IS and IS NOT false or misleading information?

If I want to say GOD IS REAL and COMING BACK to have a RAPURE. And I peacefully hold my sign up high on a street corner.... why WOULD THAT BE MORE ACCEPTABLE then someone who has an opinion on COVID 19 that may or may not be different then yours?

IF YOU PASS THIS LAW.... I EXPECT YOU TO CLOSE EVERY CHURCH in the state. NO ONE HAS PROVEN THE BIBLE. It's a belief. It's someone's opinion and free will choice.

Listen to this:

There is a bearded old man who lives in the sky.... even though bad things happen to you and he doesn't do anything, he is all-powerful. That said he does loves you and wants you to live a very restricted and limited life according to his rules. at the end of all that even if your life is miserable when you DIE... you get to go and live eternally in a place of happiness joy and unlimited prosperity.

If I ever heard misleading information that would be it.

Disclaimer: I personally LOVE GOD and spirituality.

BUT... if you ever had something that could be construed as the dissemination of false or misleading information that story of Jesus would have to be example #1.

My point... YOU/Gov't do not get to tell people what is or is not false and misleading information. People have BRAINS and FREE WILL choice to believe or not as they choose.

If I want to talk about God I can because it's a free country. if I want to talk about covid-19, I can because it's free country. If I want to talk about election fraud.... I can because it's a free country.

Out of those three points we know the two that you're going for so why don't you just come on out, be up front and honest and say:

-You're not allowed to talk about COVID 19

-You are not allowed to talk about election fraud

-You're not allowed to talk about your state elected officials (we are gods).

etc.

Basically, you're not allowed to talk about the things that we(gov't) personally decided we don't want you talking about.

How did citizens feel...Seen this? <https://www.bitchute.com/video/grGCwB6iU6yp/>

Because what you are doing is BANNING HUMAN THOUGHT. I'm not even allowed to tell someone about God (unproven information) and have them decide whether or not they like the idea. Same with COVID.

And yes... it IS the same concept...because they banned Christianity not so long ago (pick a country) for the SAME REASONING: Spreading dangerous and false, misleading ideas.

Hey... remember Galileo...? That bugga get arrested for saying the Earth was round. Good to know Hawaii hasn't evolved too much further from the people who made that wise decision.

And seriously... tell me religion sounds MORE plausible, more likely.... than ANYTHING the "COVID not a pandemic" people say. Or should we call the medically backed scientific views of COVID not a pandemic a "religion". Is that what gov't needs? Would that make gov't happy? If people called their views of COVID or Election Fraud or taxes are unconstitutional... a religion? Would free speech protection apply?

Can people call the fact that they believe there's high levels of EVIDENCE that there was ELECTION FRAUD and that there is high amounts of physical EVIDENCE that COVID IS NOT a pandemic... can they call that a religion and not be threatened as passing along false information? Just expressing a belief and showing how they got there?

I guarantee there is more evidence that the COVID is NOT a pandemic than the physical EVIDENCE any CHURCH has that GOD IS real. (Again I LOVE GOD!! But you see my point)

Beliefs in GOD can be seen as harmful to society as well in certain of its tenets. Certain religions don't like homosexuality or certain races are considered better than others or women are seen as lesser etc etc. Christianity did everything it could to squash/ change/ discredit Hawaiian spirituality... Yet we still let priests run loose on the streets and let them run whole congregations of people! No "misleading info" ban on the Catholic church then...why?

You know why you don't outright ban religion? CHOICE.

People have a choice to believe it or not and conduct their lives accordingly. That's what a free country is all about.

GOVERNMENT DOES NOT GET TO CHOOSE MY RELIGION and/or whether or not I choose to peacefully speak about it (or ANY other topic) with others in public.

THAT IS ALSO WHAT YOU ARE TRYING TO BAN.

(And don't say you are "not banning" free speech ...you want to ARREST people for speaking or sharing their thoughts in public to other citizens who have free choice to walk away or ignore) This isn't a school curriculum being taught to children! It's ideas!! You are banning ideas! BE HONEST. And why do you need to ban mere ideas? Why is it scary if the world IS possibly... ROUND.