



# HAWAI‘I CIVIL RIGHTS COMMISSION

## KOMIKINA PONO KIWILO O HAWAI‘I

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Thursday, February 9, 2023  
Conference Room 016 & Videoconference

To: The Honorable Karl Rhoads, Chair  
The Honorable Mike Gabbard, Vice Chair  
Members of the Senate Committee on Health and Human Services

From: Liann Ebesugawa, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 40

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

**The HCRC supports the intent of S.B. No. 40, and offers comments and concerns.**

S.B. No. 40, if enacted, will provide for civil liability and remedies for discriminatory reporting to a law enforcement officer, without reason to suspect a crime, offense, or imminent danger has occurred or is occurring, based on a person’s belief or perception regarding another person’s race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability.

### **The Very Real Problem of Discriminatory False Reporting – Contemporary and Historical**

A May 25, 2020, news story brought the issue of discriminatory false reporting to the front pages and into the public consciousness, triggering nationwide discussions on race and the harm caused by false reporting. A White woman called the police on a Black bird-watcher in New York City’s Central Park and falsely reported that he had threatened her. Fortunately, the entire incident was recorded, so the bird-watcher could show he had not, in fact, threatened the woman. The Central Park incident happened on the same day that George Floyd was murdered by police officers in Minneapolis, Minnesota, which brought to light the very real danger that

racial minorities, especially Black men, face in encounters with police, sparking mass protests and the Black Lives Matter movement.

In the weeks and months that followed, anecdotal accounts of other threats to make false reports were reported from across the country, as well as the horrifying growing death toll of Black Americans at the hands of police.

It is important to put these related problems of discriminatory false reporting and discriminatory police violence in historical context. Recent events are not an anomaly, but are consistent with our national history of racial violence and injustice.

If racial injustice and racism are America's intractable unsolved problem, racial violence has been the means used to perpetuate its evils from slavery to Jim Crow to today. Racial violence and lynchings have been used to intimidate and terrorize Black communities and citizens, to discourage racial justice and voting rights, to keep people down and to silence them with fear.

The 1955 Mississippi lynching of Emmitt Till, a 14-year-old African American boy accused of offending a White woman, is but one example of this history of racial violence and terror. Here in Hawai'i, the infamous lynching of Joseph Kahahawai in the *Massie* case is another example of our own history of race-based discriminatory false reporting and racial violence.

**In this contemporaneous and historical context, the HCRC supports the intent of S.B. No. 40, to the extent that its purpose is to address the very real problem and fear of discriminatory false reporting, by creating civil liability and remedies for those who engage in that practice.**

### **Comments and Concerns**

The HCRC has some concerns about possible unintended consequences that could result if the bill becomes law in its current form.

The new § \_\_-1(a) provides:

**§ -1 Discriminatory reporting; law enforcement officer; civil remedy.** (a) Any person:

(1) Who summons or reports to a law enforcement officer, without reason to suspect a violation of the Hawaii Penal Code, any other criminal conduct, or an imminent danger to a person or property, has occurred or is occurring; and

(2) Whose summons or report is based in whole or in substantial part because of that person's belief or perception regarding the race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability of another person, regardless of whether the belief or perception is correct, shall be liable in a civil action or proceeding.

This statutory language raises two separate but related concerns:

The first concern is that the statute as drafted could exacerbate underreporting of suspicious activity and calls for help, including reporting and requests for help from marginalized communities that the bill is meant to protect.

The second concern is more specific and technical. The language of § \_\_-(a)(1) and (2) is problematic. Paragraph (1) imposes a standard on the person who summons or reports to a law enforcement officer of having “*reason to suspect a violation* of the Hawaii Penal Code, any other criminal conduct, or an *imminent* danger to a person or property, has occurred or is occurring.”; This is a high standard to impose on a person who calls the police. And, paragraph (2) creates liability for a summons or report “based in whole or in substantial part because of that person's belief or perception regarding the race [or other protected basis]... *regardless of whether the belief or perception is correct...*”

The problem this statutory language creates can be best illustrated and explained by an example scenario: A resident calls 911 to report that several “suspicious” persons have been parking in front of their residence for several nights. The resident is suspicious and afraid, and describes them as four *young Asian men*. The report goes to the police and they send a car to check it out. In determining whether civil liability attaches, the analysis under the statute will require a determination of whether the resident had reason to suspect a violation of the Penal Code or other criminal conduct, or imminent danger to person or property had occurred or was occurring. The description of the subjects of the report/call as Asian, young, and male, was based in whole or in substantial part on the resident’s belief or perception regarding their race, age, and sex, and, liability would attach *regardless of whether the belief or perception was correct*.

The HCRC suggests that the problems with the new § \_\_-1 could be addressed and fixed by amending that section to import and incorporate the elements from the criminal false reporting statute, HRS § 710-1015, to create civil liability for discriminatory false reporting to

law enforcement authorities, when a person *intentionally makes a report knowing that the report is false.*

**HCRC supports the intent of S.B. No. 40, with the comments and concerns raised and discussed herein.**

**SB-40**

Submitted on: 2/4/2023 9:01:50 AM

Testimony for JDC on 2/9/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE: Officers are already bogged down with REAL issues. Adding this to their already overburdened plate is not advisable.

Maui Police Dept., Assistant Chief (Retired) V. Ramos