

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Chair: Rep. Angus McKelvey

Vice Chair: Rep. Justin Woodson

Monday, February 9, 2015

2:30 p.m.

Room 325

SUPPORT for HB 529 - ARREST BOOKING PHOTOGRAPHS

Aloha Chair McKelvey, Vice Chair Woodson 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 almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars, always mindful that more than 1,600, and soon to be rising number of Hawai'i individuals who 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 529 addresses the issue of arrest booking photographs for criminal cases resulting in no conviction: 1) prohibits commercial websites from collecting a fee for removing arrest booking photographs from the website; and 2) prohibits criminal justice agencies from posting arrest booking photographs on a website except as provided by law.

Community Alliance on Prisons supports this measure. These days the internet is rife with companies selling personal information. When someone's photo is on one of these sites, the issue of innocence disappears.

An arrest is not a conviction, yet photos of arrestees are all over the internet. One of the basic tenets of our democracy is the principle that people are innocent until proven guilty.

Community Alliance on Prisons respectfully asks the committee to please support this bill. Mahalo for this opportunity to testify.

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 04, 2015 6:10 PM
To: CPCtestimony
Cc: ezlchirpz@gmail.com
Subject: *Submitted testimony for HB529 on Feb 9, 2015 14:30PM*

HB529

Submitted on: 2/4/2015

Testimony for CPC on Feb 9, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lezlie Kiaha	Individual	Support	No

Comments:

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woodson2-Rachel

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To: CPCtestimony
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HB529

Submitted on: 2/4/2015

Testimony for CPC on Feb 9, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:

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LATE

Committee: Committees on Consumer Protection and Commerce
Hearing Date/Time: Monday, February 9, 2015, 2:30 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in **Opposition to H.B. 529**, Relating to Arrest Booking Photographs

Dear Chair McKelvey and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in **opposition to H.B. 529**, Relating to Arrest Booking Photographs.

Section 1 of the bill, proposing to punish those who refuse to remove photographs from their websites, is likely unconstitutional. As a general matter, “state action to punish the publication of truthful information seldom can satisfy constitutional standards.” *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 102 (1979). More specifically, the Court has repeatedly held that “if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need . . . of the highest order.” *Id.*, at 103; see also *Florida Star v. B. J. F.*, 491 U.S. 524 (1989); *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978). Newspapers and web sites have a constitutional right to engage in, and profit off of, speech – even speech we find distasteful.

Section 2 of the bill, proposing to limit who may access these photographs, is also problematic. Hawaii’s Uniform Information Practices Act (“UIPA”), HRS chapter 92f, properly focuses on *what* records are being requested, not *who* is requesting them (or why they are being requested). If records are public, they are public; there should not be two different classes of requestors (those requesting them for purposes the State believes are benevolent and those requesting them for purposes the State deems otherwise).

A market-based approach may be more effective to combat the problem the bill attempts to address. Google has already started to de-index these sites, *see* <http://blog.codeguard.com/google-cracks-mughshot-sites/>, and the Legislature may wish to

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Chair McKelvey and Committee Members

February 9, 2015

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consider ways to increase the transactional costs for those firms that seek to profit from public records in this way.

In sum, the ACLU of Hawaii respectfully requests that the Committees defer this measure.

Thank you for this opportunity to testify.

Daniel M. Gluck
Legal Director
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii 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 Hawaii has been serving Hawaii for 50 years.

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COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Monday, February 9, 2015, 2:30 p.m., Room 325
HB 529 RELATING TO ARREST BOOKING PHOTOGRAPHS
League of Women Voters of Hawaii

Chair McKelvey Vice Chair Woodson, and Committee Members:

The League of Women Voters of Hawaii SUPPORTS THE INTENT of HB 259 and offers these additional comments:

Arrest booking photographs, taken by state criminal justice agencies for lawful purposes, should not be traded, bought or sold on the open market. Given the proliferation of commercial ventures on the Internet claiming to offer background checks for a fee, the League supports the intent of legislation which seeks to limit the use of such photographs to the purposes for which they were intended, and as outlined in Hawaii Revised Statutes, including Section 846-9.

State and federal criminal justice agencies are statutorily limited by procedures that outline the proper use, exchange, and accuracy of such information, including for those who are arrested but never charged with a crime. Commercial ventures that sell "background checks" or utilize arrest booking photographs for other purposes, without statutory limits, can lead to the detriment of an individual's reputation and cause harm to their economic self sufficiency. This is particularly true in cases that are dismissed, or result in non-conviction or exoneration.

At the same time, the League recognizes that the hurdle of implementation of HB529 is steep. Efforts to control the proliferation of digital imagery on the Internet present many challenges. As currently drafted, the onus is on the individual to pursue a remedy. Attempts to regulate the website commerce which is the subject of the bill also poses inherent challenges. Should the bill move forward, any amending language should consider the following questions: Does the bill interfere with the ability of criminal justice agencies to conduct the important public service of protecting the public/community from crime? Does the bill infringe on access to information that may be necessary for legitimate purposes, such as employment criminal background checks, or the sharing of information between criminal justice agencies? And finally, does the bill provide adequate and additional protection for individuals who are entitled to have such access restricted under the laws of the state?

Thank you for the opportunity to submit testimony on this important measure.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 08, 2015 3:43 PM
To: CPCtestimony
Cc: jenny@hiappleseed.org
Subject: *Submitted testimony for HB529 on Feb 9, 2015 14:30PM*



HB529

Submitted on: 2/8/2015

Testimony for CPC on Feb 9, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jenny Lee	Individual	Support	No

Comments:

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Cc: angindigo@gmail.com
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HB529

Submitted on: 2/9/2015

Testimony for CPC on Feb 9, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
D'Angelo McIntyre	Individual	Support	No

Comments:

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