



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

S.B. NO. 52, S.D. 1, H.D. 1, RELATING TO REGISTRATION OF SEX OFFENDERS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 30, 2011 TIME: 1:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General supports this bill, but recommends certain amendments to section 846E-10, Hawaii Revised Statutes.

This bill adds the following offenses to the definition of "sexual offense" in section 846E-1:

- Promoting prostitution in the first degree, in violation of section 712-1202(1)(a), Hawaii Revised Statutes;
- Promoting prostitution in the second degree, in violation of section 712-1203(1), Hawaii Revised Statutes; and
- Violation of privacy in the first degree, in violation of section 711-1110.9, Hawaii Revised Statutes.

People convicted of these offenses will now be required to register as sex offenders.

Promoting Prostitution in the Second Degree

On page 1, at lines 10-11, the bill removes section 712-1203(1)(b), Hawaii Revised Statutes, from the definition of

"sexual offense" because this paragraph was repealed by Act 147, Session Laws of Hawaii 2008.

For the same reason, the Department recommends that the bill be amended by adding a new section to the bill to amend section 846E-10(c), Hawaii Revised Statutes, to just remove the reference to section 712-1203(1)(b) from section 846E-10(c)(1).

Violation of Privacy in the First Degree

Violation of privacy in the first degree is being added to the definition of "sexual offense" under section 846E-1, Hawaii Revised Statutes. This is appropriate because it involves conduct of a sexual nature.

Violation of privacy in the first degree involves the installation or use of "any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place." The statute clearly prohibits sexual misconduct, and the legislative history of section 711-1110.9 confirms a specific legislative intent to address misconduct of a sexual nature. Conference Committee Report No. 87, on House Bill No. 955, H.D. 1, S.D. 1, C.D. 1, from the Regular Session of 1999, stated the following about the legislation that created the offense:

The purpose of this bill is to make it a felony to take sexual photographs or videotapes of a person without that person's consent and when the person expects privacy . . . Your Committee finds that people's expectation of privacy in sexual matters should be protected. The creation of criminal sanctions against invasions into one's sexual privacy will deter these types of activities.

Time Periods for Termination of Registration Requirements

In section 2, on page 3, starting at line 8, the bill also adds violation of privacy in the first degree to section 846E-

10(d), Hawaii Revised Statutes. This identifies the offense as a covered tier 1 registration offense, which would subject someone convicted of the offense to sex offender registration requirements for at least ten years.

Just as violation of privacy in the first degree has been added to section 846E-10, the Department recommends that section 2 of this bill be amended to add promoting prostitution in the first degree (section 712-1202(1)(a)) and promoting prostitution in the second degree (section 712-1203(1)) to section 846E-10(d)(1). Since the bill makes these crimes covered offenses for purposes of sex offender registration, they must be designated a particular registration tier under section 846E-10 to establish a minimum period of registration.

We respectfully request the passage of this measure with the recommended amendments.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

KEITH M. KANESHIRO
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ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE MARCUS OSHIRO, CHAIR
HOUSE COMMITTEE ON FINANCE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

March 17, 2011

RE: S.B. 52, S.D. 1. H.D. 1; RELATING TO REGISTRATION OF SEX OFFENDERS.

Chair Oshiro, Vice Chair Lee, and members of the Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu is in support of Senate Bill 52, Senate Draft 1, House Draft 1 with technical amendments.

The purpose of this bill is to retroactively and prospectively require persons convicted of violation of privacy in the first degree pursuant to section 711-1110.9, Hawaii Revised Statutes (HRS), to register as sex offenders for ten years. Under section 711-1110.9, HRS, a person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law, the person intentionally or knowingly installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place. Violation of privacy in the first degree is a class C felony.

Currently, persons who are required to register as a sex offender have:

- Subjected another person to an act of sexual penetration or sexual contact by compulsion or strong compulsion;
- Engaged in sexual penetration or sexual contact with another person who is less than 14 years old.
- Engaged in sexual penetration or sexual contact with another person who is at least 14 years old but less than 16 years old; provided that the person is not less than 5 years older than the minor; and the person is not legally married to the minor;
- Subjected another person who is mentally defective, mentally incapacitated, or physically helpless to sexual penetration or sexual contact;

- Advanced or profited from prostitution of a person less than 18 years old;
- Kidnapped another person with the intent to subject the person to a sexual offense;
- Intentionally masturbated or intentionally exposed genitals in a lewd or lascivious manner live over the computer to another person under 18 years old;
- Solicited a minor who is less than 14 years old to engage in sexual conduct;
- Used a minor in a sexual performance;
- Produced, distributed, or possessed child pornography; and
- Electronically enticed a minor under 18 years old with the intent to promote or facilitate the commission of a felony, and met the minor at a meeting place at an agreed upon time.

Under section 711-1110.9, HRS, persons who observe another person in a stage of undress or sexual activity should falls into the category of sexual offenses and be required to register as a sex offender because such acts cause emotional damage on the victims. An act need not be physical in order to subject victims to emotional pain and challenges.

Also, **we recommend some technical amendments.** The Sex Offender Registration law currently includes promoting prostitution of person less than eighteen years old. Section 712-1203(1)(b), HRS, Promoting prostitution in the second degree, used to be "Advances or profits from prostitution of a person less than eighteen years old," however, in 2008, it was moved to section 712-1202(1)(b), HRS, Promoting prostitution in the first degree, thus replacing "Advances or profits from prostitution of a person less than sixteen years old." Therefore, **section 712-1203(1)(b), HRS, was correctly deleted from this bill since it no longer exists.**

However, **section 712-1202(1)(a), HRS and 712-1203(1), HRS, was inadvertently added.** Section 712-1202(1)(a), HRS would expand the Sex Offender Registry law to include "Advances prostitution by compelling a person by force, threat, or intimidation to engage in prostitution, or profits from such coercive conduct by another." Section 712-1203(1) would expand the Sex Offender Registry law to include "A person commits the offense of promoting prostitution in the second degree if the person knowingly advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activities by two or more prostituted persons."

The previous legislature intended to only include "Advances or profits from prostitution of a person less than eighteen years old." Therefore, we recommend **deleting section 712-1202(1)(a), HRS and 712-1203(1), HRS,** unless it is this legislature's intent to include these sections as a new part of the Sex Offender Registry law.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports Senate Bill 52, Senate Draft 1, House Draft 1 with technical amendments. Thank you.



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

**TESTIMONY ON SENATE BILL 52, SENATE DRAFT 1, HOUSE DRAFT 1, RELATING TO REGISTRATION OF
SEX OFFENDERS**

House Committee on Finance

Hon. Marcus R. Oshiro, Chair

Hon. Marilyn B. Lee, Vice Chair

Wednesday, March 30, 2011, 1:00 PM

State Capitol, Conference Room 308

Honorable Chair Oshiro and committee members:

I am Kris Coffield, representing the Imua Alliance, a nonpartisan political advocacy organization that currently boasts over 60 local members. On behalf of our members, we offer this testimony in support of SB 52, SD1, HD1 relating to the registration of sex offenders.

As digital technology has become more sophisticated, so, too, have the means by which sexual predators facilitate their crimes. Accordingly, statutes governing sexual offender registries must be modified to accommodate electronic crimes, exactly as envisioned by this measure's amendment of §846E-1 to include persons convicted of violation of privacy in the first degree within the state's definition of "sexual offense." Pursuant to §711-1110.9, a person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law, the person intentionally or knowingly installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place. The State Legislature's history of activity with regard to this measure has been in lockstep with technological advancement. Originally enacted, in 1999, to distinguish between the surreptitious recording of any events in a private place with a hidden device and the more egregious offense of using a hidden device to record acts of a highly personal nature, §711-1110.9 was revised, in 2003, to address concerns for the practices of broadcasting intimate information, particularly "video voyeurism" and "upskirt photography," and again, in 2004, to clarify that the law covered usage or installation, or both, for observing, recording, amplifying, or broadcasting sexual acts. Since, in past sessions, lawmakers have aggressively denounced the growing usurpation of technology for difficult-to-track sex crimes, it makes sense to bolster that effort, as well as victims' rights, by subjecting perpetrators to sanctions likely to diminish repeat offenses, including mandatory registration as sex offenders.

Also, with regard to the definition of "sexual offense," SB 52, SD1, HD1 replaces §712-1203(1)(b)—a subsection repealed by Act 147, in 2008—with §712-1202(1)(a) and §712-1203(1), subsections covering promotion of prostitution in the first and second degree, respectively. The difference between the two statutes entails the age of the victim, with the former statute covering minors and the latter covering all other individuals, provided that two or more individuals are victimized by the offense. Though sex offender registries have often been associated with the prosecution of crimes linked to pedophilia, hebephilia, and ephebophilia, especially in the media and popular culture, legislators have withheld this distinction in Hawaii, as evidenced by the inclusion of nearly all forms of sexual assault within the current definition of "sexual offense." Moreover, the addition of second degree promotion of prostitution to list of sexual offenses subject to §846E-1 would buttress attempts to combat human trafficking in the islands because many victims of sex trafficking are coerced into working at a "house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostituted persons" by a person who "knowingly advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others" such an establishment, as stipulated under §712-1203(1). While the enactment of an anti-trafficking clause may not have been the intent of incorporating this provision into the bill's language, it is a noteworthy side effect, and one that should not be taken lightly.

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

SB 52 SD1 HD1

Title: Sex offender registration; Violation of Privacy

This amendment requires persons convicted of violation of privacy in the first degree and all persons convicted of promoting prostitution in the first degree to register as sex offenders. Applies retroactively.

In the State of Hawaii, voyeurism is an offense but is not considered a sex offense. If convicted, the perpetrator is not required to sign the Sex offender registry. Voyeurism should be considered a sex offense because the deed is based on the offender's sexual gratification. A "peeping tom" armed with access to electronic media, easy access to the Internet, and preys on innocent men, women or children, is a threat to the community. Using electronic means to "peep" is not spontaneous, but is calculated, pre-planned. It is not harmless, it is not normal. It shows signs of a sick person who cannot differentiate between right and wrong. Thus, the mandatory treatments, at their expense would be required to break the cycle.

There should be zero tolerance towards voyeurism/video voyeurism, especially towards minors. It is totally destructive with long term psychological effects upon the child.

Per Hawaii State code §711-1110.9, Violation of privacy in the first degree is a class C felony if the person intentionally installs, any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place without consent of the person or persons entitled to privacy therein. Exceptions would include execution of a public duty or as authorized by law.

In addition, the Video Voyeurism Prevention Act of 2004 (18 U.S.C.A. 1801) upholds this felony with fines and/or up to one year in prison. Currently 44 states, including Hawaii have legislation which considers video voyeurism a Criminal felony except Iowa, New Mexico, Nevada, & the District of Columbia. A person is found guilty of video voyeurism when, there is evidence that the deed was recorded for the purpose of one's own sexual arousal, entertainment, satisfaction, or to sexually degrade or abuse any other person and intentionally disseminates, publishes or sells any image without their consent.

The state of Louisiana sees video voyeurism as a sex offense, & whoever commits the crime shall be required to register as a sex offender per chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950, & also requires an offender to live in a designated area.

I have a personal interest in supporting SB52 SD1 HD1 as noted below:

Criminal case 1PC07-1-001990 State of Hawaii vs. Robert Thomas Franks: Violation of privacy in the first degree; Class C felony. Sentenced to 1 year in prison on August 18, 2009. The defendant

planted a spy camera in a clock radio in the family bathroom & recorded nude pictures of his stepdaughters as they were undressing to take a shower. This set up was hooked up to a DVD recorder & a remote was used to record at will. These pictures were edited on the computer. It is not known if these pictures were posted on the Internet. My daughters were 14 and 19 at the time.

Because of the existing state law, he was not required to sign the sex offender registry, even though the Judge felt he should. He tried to transfer his prison sentence/ parole to the state of Louisiana because his girlfriend lives there. Louisiana law considers voyeurism a sex offence & required him to sign the registry as well as live in a designed area. Because of this, he has opted to do his prison term & parole in Hawaii.

We must bring our current sex offender laws up to date but also send a clear message to others that voyeurism/ video voyeurism will not be tolerated in the State of Hawaii, especially when adults prey on children. The message to sex offenders out there is that this is serious & you will not get off that easy. A person who commits voyeurism is a sexual predator, is sick, and if left untreated, will eventually "touch" or rape. We're saying that if there is a conviction, then signing the sex offender registry should be a requirement for 10 years. The prosecution/ conviction rate is low because victims are afraid to turn in their perpetrators or because of the lack of hard evidence. So as long as there is a conviction, they should sign the sex offender registry retroactively.

Any child who is a victim of voyeurism/ video voyeurism is psychologically harmed. My daughters were 14 & 19 when my ex-husband recorded them in 2006. They are 19 & 25 and cannot talk about it. They have both gone through therapy but it is unknown what long term psychological effects still await them. I am the voice for my daughters and for any other child who may become a victim. I humbly ask for your support of SB52 SD1 HD1 & your vote to update our existing law.

Vr,
Joyce Jo

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 29, 2011 7:05 AM
To: FINTestimony
Cc: lingle@hawaii.rr.com
Subject: Testimony for SB52 on 3/30/2011 1:00:00 PM

Testimony for FIN 3/30/2011 1:00:00 PM SB52

Conference room: 308
Testifier position: support
Testifier will be present: Yes
Submitted by: Evie M. Lingle
Organization: Individual
Address:
Phone:
E-mail: lingle@hawaii.rr.com
Submitted on: 3/29/2011

Comments:

I humbly ask for your support of SB52 SD1 HD1 which required persons CONVICTED of violation of privacy (i.e. voyeurism/ video voyeurism) in the first degree to REGISTER as sex offenders for ten years. (Applies retroactively)). Considering what the victim has to live with the rest of their lives it is only justice that a 10 year registry is required. Please protect the innocent from these crimes of voyeurism.

In the state of Hawaii, voyeurism is a criminal offense but is not considered a sex offense & if convicted, does not require signing the Sex Offender registry.

A "peeping tom" armed with access to high tech electronic media and preys on innocent men, women, & children is a threat to the community.

Your support and passage of this bill will not only bring the current sex offender laws up to date but also send a clear message that this will not be tolerated in the State of Hawaii.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 29, 2011 9:25 AM
To: FINTestimony
Cc: kathryn.mcnellis@navy.mil
Subject: Testimony for SB52 on 3/30/2011 1:00:00 PM

Testimony for FIN 3/30/2011 1:00:00 PM SB52

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Kathryn McNellis
Organization: Individual
Address:
Phone:
E-mail: kathryn.mcnellis@navy.mil
Submitted on: 3/29/2011

Comments:

I support this bill!! Please make it a law to protect the people of Hawaii that need to be protected!!

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 29, 2011 9:03 AM
To: FINTestimony
Cc: porterm001@hawaii.rr.com
Subject: Testimony for SB52 on 3/30/2011 1:00:00 PM

Testimony for FIN 3/30/2011 1:00:00 PM SB52

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Mabby McDiarmid Porter
Organization: Individual
Address:
Phone:
E-mail: porterm001@hawaii.rr.com
Submitted on: 3/29/2011

Comments:

I humbly ask for your support of SB52 SD1 HD1 which required persons convicted of violation of privacy (i.e. voyeurism/ video voyeurism) in the first degree to register as sex offenders for ten years. (Applies retroactively))

In the state of Hawaii, voyeurism is a criminal offense but is not considered a sex offense & if convicted, does not require signing the Sex Offender registry.

A "peeping tom" armed with access to high tech electronic media and preys on innocent men, women, & children is a threat to the community.

Your support and passage of this bill will not only bring the current sex offender laws up to date but also send a clear message that this will not be tolerated in the State of Hawaii.

Thank you for doing this. It has been difficult living across the street from a peeping tom, who filmed his step daughter in the shower, visited the little children a house away while ignoring my house which is filled with adults. He went to jail and is out without others knowing how sick he is! Help us please! Mahalo!

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 29, 2011 9:13 AM
To: FINTestimony
Cc: june.j.shimabukuro@navy.mil
Subject: Testimony for SB52 on 3/30/2011 1:00:00 PM

Testimony for FIN 3/30/2011 1:00:00 PM SB52

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: June Shimabukuro
Organization: Individual
Address:
Phone:
E-mail: june.j.shimabukuro@navy.mil
Submitted on: 3/29/2011

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 29, 2011 9:36 AM
To: FINTestimony
Cc: iris.teramoto@pacom.mil
Subject: Testimony for SB52 on 3/30/2011 1:00:00 PM

Testimony for FIN 3/30/2011 1:00:00 PM SB52

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Iris Teramoto
Organization: Individual
Address:
Phone:
E-mail: iris.teramoto@pacom.mil
Submitted on: 3/29/2011

Comments:

I humbly ask for your support of SB52 SD1 HD1 which requires persons convicted of violation of privacy (i.e. voyeurism/ video voyeurism) in the first degree to register as sex offenders for ten years. (Applies retroactively))

In the state of Hawaii, voyeurism is a criminal offense but is not considered a sex offense & if convicted, does not require signing the Sex Offender registry.

A "peeping tom" armed with access to high tech electronic media and preys on innocent men, women, & children is a threat to the community.

Your support and passage of this bill will not only bring the current sex offender laws up to date but also sends a clear message that this will not be tolerated in the State of Hawaii.

Thank you.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 29, 2011 11:02 AM
To: FINTestimony
Cc: gayle.miyamoto@navy.mil
Subject: Testimony for SB52 on 3/30/2011 1:00:00 PM

Testimony for FIN 3/30/2011 1:00:00 PM SB52

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Gayle Miyamoto
Organization: Individual
Address:
Phone:
E-mail: gayle.miyamoto@navy.mil
Submitted on: 3/29/2011

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 29, 2011 3:14 PM
To: FINTestimony
Cc: oshirov@hawaii.rr.com
Subject: Testimony for SB52 on 3/30/2011 1:00:00 PM

Testimony for FIN 3/30/2011 1:00:00 PM SB52

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Valerie Oshiro
Organization: Individual
Address:
Phone:
E-mail: oshirov@hawaii.rr.com
Submitted on: 3/29/2011

Comments:
I support SB52 SD1 HD1.