

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO CYBERBULLYING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that across the country,  
2 states are grappling with escalating instances of cyberbullying  
3 and their often tragic results. Currently, twenty-five states  
4 have passed laws against cyberbullying, and most states direct  
5 local school districts on how to deal with cyberbullying -  
6 ranging from training personnel to disciplining students.

7       The department of education and board of education have  
8 both rules and policies governing cyberbullying. Legislation  
9 was passed in 2011 to require the monitoring and enforcement of  
10 these policies, however concerns were raised that this  
11 legislation would not provide protection during non-school hours  
12 or to non-department of education students and the general  
13 public.

14       The legislature further finds that currently, the  
15 department refers cyberbullying issues to the police. The  
16 police, however, are hampered in their response because there is  
17 no clear penalty for cyberbullying.



1       The purpose of this Act is to provide greater protection  
2       for victims of cyberbullying by establishing an offense of  
3       harassment by cyberbullying, with the first or second offense as  
4       a misdemeanor, and a third or any subsequent offense as a class  
5       C felony.

6       SECTION 2. Chapter 711, Hawaii Revised Statutes, is  
7       amended by adding a new section to be appropriately designated  
8       and to read as follows:

9       "§711-       Harassment by cyberbullying.   (1) A person  
10      commits the offense of harassment by cyberbullying if, with  
11      intent to harass, annoy, or alarm another person, or in reckless  
12      disregard of the risk thereof, that person engages in a course  
13      of conduct involving pursuit, surveillance, or nonconsensual  
14      contact upon the other person on more than one occasion without  
15      legitimate purpose.

16      (2) A person convicted under this section may be required  
17      to undergo a counseling program as ordered by the court.

18      (3) For purposes of this section:

19      "Cyberbullying" means electronically transmitted acts,  
20      whether by the Internet, cell phone, personal digital assistance  
21      device, or any wireless hand-held device, which a person has  
22      exhibited toward another person that causes mental or physical



1 harm to the other person and is sufficiently severe, persistent,  
2 or pervasive that it creates an intimidating, threatening, or  
3 abusive environment.

4 "Nonconsensual contact" means any contact that occurs  
5 without that individual's consent or in disregard of that  
6 individual's express desire that the contact be avoided or  
7 discontinued. Nonconsensual contact includes direct personal  
8 visual or oral contact and contact via telephone, facsimile, or  
9 any form of electronic communication, as defined in section  
10 711-1111(2), including electronic mail transmission.

11 (4) A person shall be sentenced for harassment by  
12 cyberbullying as follows:

13 (a) For the first offense, the offense shall be a  
14 misdemeanor, and the person shall serve a minimum jail  
15 sentence of forty-eight hours;

16 (b) For a second offense that occurs within one year of  
17 the first conviction, the offense shall be a  
18 misdemeanor, and the person shall be termed a "repeat  
19 offender" and serve a minimum jail sentence of thirty  
20 days; and



1        (c) For a third or any subsequent offense that occurs  
2                within two years of a second or subsequent conviction,  
3                the offense shall be a class C felony."

4            SECTION 3. Section 708-890, Hawaii Revised Statutes, is  
5 amended by adding a new definition to be appropriately inserted  
6 and to read as follows:

7            "Cyberbullying" means electronically transmitted acts,  
8 whether by the Internet, cell phone, personal digital assistance  
9 device, or any wireless hand-held device, which a person has  
10 exhibited toward another person that causes mental or physical  
11 harm to the other person and is sufficiently severe, persistent,  
12 or pervasive that it creates an intimidating, threatening, or  
13 abusive environment."

14           SECTION 4. Section 708-893, Hawaii Revised Statutes, is  
15 amended by amending subsection (1) to read as follows:

16           "(1) A person commits the offense of use of a computer in  
17 the commission of a separate crime if the person:

18           (a) Intentionally uses a computer to obtain control over  
19 the property of the victim to commit theft in the  
20 first or second degree; or

21           (b) Knowingly uses a computer to identify, select,  
22 solicit, persuade, coerce, entice, induce, or procure



the victim or intended victim of the following offenses:

- (i) Section 707-726, relating to custodial interference in the first degree;
- (ii) Section 707-727, relating to custodial interference in the second degree;
- (iii) Section 707-731, relating to sexual assault in the second degree;
- (iv) Section 707-732, relating to sexual assault in the third degree;
- (v) Section 707-733, relating to sexual assault in the fourth degree;
- (vi) Section 707-751, relating to promoting child abuse in the second degree; [ex]
- (vii) Section 711- , relating to harassment by cyberbullying; or
- ~~[(vii)]~~ (viii) Section 712-1215, relating to promoting pornography for minors."

SECTION 5. The provisions of this Act shall be liberally construed to give effect to the purposes thereof.



1       SECTION 6. Nothing in this Act is intended to interfere  
2 with the First Amendment rights of free speech and expression of  
3 any person affected.

4       SECTION 7. If any provision of this Act, or the  
5 application thereof to any person or circumstance is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act, which can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

10       SECTION 8. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13       SECTION 9. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15       SECTION 10. This Act shall take effect upon its approval.

16  
INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 2539

**Report Title:**

Harassment by Cyberbullying; Establishment; Penalties

**Description:**

Establishes an offense of harassment by cyberbullying, with the first and second offenses as misdemeanors, and any third and subsequent offense as a class C felony.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

