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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 2295, H.D. 1, RELATING TO CYBERBULLYING.

BEFORE THE:

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

DATE: Friday, March 16, 2012

TIME: 1:30 p.m.

LOCATION: State Capitol, Room 016

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

Chair Fukunaga and Members of the Committee:

The Department of the Attorney General (the "Department"), appreciates the intent of the bill in protecting the State's children, and submits the following comments and concerns.

The purpose of this bill is to create the offense of harassment by cyberbullying.

The bill defines the petty misdemeanor offense of harassment by cyberbullying as follows:

A person commits the offense of harassment by cyberbullying if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in conduct involving pursuit, surveillance, **digital nuisance**, or nonconsensual contact upon the other person without legitimate purpose **by means of electronic communication**.

This definition is very similar to the definitions of the offenses of harassment by stalking, in violation of section 711-1106.5, Hawaii Revised Statutes (HRS), a full misdemeanor offense, and harassment, in violation of section 711-1106, HRS, a petty misdemeanor offense. This is pointed out because the conduct intended to be prohibited by this new offense is already covered to a large extent under existing law.

Section 711-1106.5(1), HRS, defines harassment by stalking as follows:

A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of conduct involving pursuit, surveillance, or nonconsensual contact upon the other person on more than one occasion without legitimate purpose.

For purposes of this section, subsection (3) defines "nonconsensual contact" to include "any form of electronic communication, as defined in section 711-1111(2), including electronic mail transmission."

Section 711-1106(1), HRS, provides in part:

A person commits the offense of harassment if with intent to harass, annoy, or alarm any other person, that person:

...

- (c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication.

...

- (d) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome. . . .

These two offenses of harassment by stalking and harassment already cover much of the conduct intended to be prohibited by the proposed offense of harassment by cyberbullying.