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**Testimony of the Office of the Public Defender, State of Hawai'i, to the
House Committees on Judiciary and Hawaiian Affairs and Agriculture
and Food Systems**

March 13, 2024

S.B. 2193, S.D.1 Relating to Computer Crime

**Chairs: David A. Tarnas, and Cedric Asuega Gates Vice Chairs: Gregg Takayama
and Kirstin Kahaloa and Members of the Committees:**

The Office of the Public Defender respectfully opposes S.B. 2193 S.D. 1. This bill adds language to HRS section 708-893 to include the offenses of Violation of Privacy in the First Degree and Second Degree as punishable when a "computer" is used in the commission of said offenses. Currently, a violation of HRS sections 711-1110.9 (Violation of Privacy in the First Degree) is a class C felony punishable by 5 years of incarceration, and 711-1111 (Violation of Privacy in the Second Degree) is a misdemeanor punishable by 1 year of incarceration. With the proposed changes to HRS section 708-839, the mere use of a smart phone in the commission of a violation of privacy would now create a separate offense that is a class B felony or a class C felony. Thus, the use of a computer device, including a smart phone, would be a more severe punishment than the commission of the crime itself. Currently, HRS sections 71110.9 and 711-1111 anticipates the dissemination of private materials through the internet or other means, and have punishments affixed for such transgressions. One cannot navigate the internet or perform other electronic processes without the use of a computing device, and thus adding language to HRS section 708-893 that creates a new crime for the same action will result in confusion and legal challenges. Punishing individuals for committing bad acts against other citizens is well accepted, however, adding crimes or punishments for the way in which these bad acts occur has no deterrent

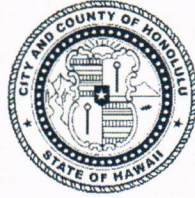
effect, and only creates confusion, over charging of criminal offenses, and added expenses in the dispensation of justice.

For these reasons we respectfully oppose S.B. 2193, S.D. 1

Thank you for the opportunity to comment on this bill.

POLICE DEPARTMENT
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CITY AND COUNTY OF HONOLULU

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OUR REFERENCE TC-BT

March 13, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
The Honorable Cedric Asuega Gates, Chair
and Members
Committee on Agriculture and
Food Systems
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

Dear Chairs Tarnas and Gates and Members:

SUBJECT: Senate Bill No. 2193, S.D. 1, Relating to Computer Crime


I am Thomas Chang, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2193, S.D. 1, Relating to Computer Crime.

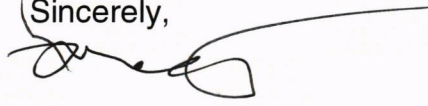
Including the Hawai'i Revised Statutes of Violation of Privacy in the First and Second Degrees helps strengthen the penalties against any violators and deters them from conducting this type of behavior. This measure will strengthen the HPD's ability to combat these types of computer crimes.

The HPD urges you to support Senate Bill No. 2193, S.D. 1, Relating to Computer Crime. Thank you for the opportunity to testify.

APPROVED:


Arthur J. Logan
Chief of Police

Sincerely,


Thomas Chang, Captain
Criminal Investigation Division

**DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai'i**

March 13, 2024

RE: S.B. 2193 SD1; RELATING TO COMPUTER CRIME.

Chair Tarnas, Vice Chair Takayama, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong support** of S.B. 2193 SD1. This bill is part of the Department's 2024 legislative bill package, and we thank you for hearing it.

The purpose of S.B. 2193 SD1 is to amend the offense of Use of a Computer in the Commission of a Separate Crime (HRS §708-893), to add Violation of Privacy in the 1st and 2nd Degree (HRS §711-1110.9 and §711-1111), as qualifying offenses.

On its own, Violation of Privacy ("VOP") is already a very serious charge. Indeed, the thought of someone installing a GoPro in a high school locker room,¹ for example—to record random occupants and/or show those videos to a friend or mutual acquaintance—would be a horrifying thought for any potential victim, or their family, regardless of whether the people recorded were in a "stage of undress" (i.e. VOP 1st degree, HRS §711-1110.0) or not (i.e. VOP 2nd degree, HRS §711-1111). *However*, the thought of someone using a GoPro *connected to a computer*—to "identify [or] select" specific individuals, and/or "disclose" those images via computer to the entire community—rises to the level of an entirely different offense.

Alternatively, if someone used a computer to gain access to a victim's Snapchat or other social media account, obtained private pictures without the victim's consent, then disclosed (or threatened to disclose) the pictures, that too, was only made possible by use of a computer. The

¹ See "Police: High school coach admits to hiding cameras in locker rooms for two years," WSAZ News Channel 3, May 8, 2023. Available online at: <https://www.wsaz.com/2023/05/09/police-high-school-coach-admits-hiding-cameras-locker-rooms-2-years/>; last accessed January 30, 2024.

situation could be further amplified if the disclosure was also made via computer (i.e. potentially to a large number of people, and irretrievable).

If enacted, S.B. 2193 SD1 would provide an additional tool for prosecutors to make these types of distinctions, when charging future offenses. Moreover, and perhaps more importantly, the Department hopes this would serve as a deterrent, to prevent these types of situations from occurring in the first place.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly supports** the passage of S.B. 2193 SD1. Thank you for the opportunity to testify on this matter.

SB-2193-SD-1

Submitted on: 3/9/2024 11:41:58 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacqueline S. Ambrose	Individual	Support	Written Testimony Only

Comments:

Aloha,

Yes to amending the offense of use of a computer in the commission of a separate crime to include violation of privacy in the first and second degrees

SB-2193-SD-1

Submitted on: 3/9/2024 11:52:38 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support

SB-2193-SD-1

Submitted on: 3/12/2024 7:44:27 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

SUPPORT. MORE SIMILAR TYPE BILLS NEEDED.

MAHALO!