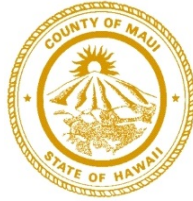


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**TESTIMONY ON S.B. 2310
RELATING TO HARASSMENT**

TO: Honorable Karl Rhoads, Chair
Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

FROM: Department of the Prosecuting Attorney, County of Maui

DATE: February 8, 2024

SUBJECT: COMMENTARY ON SB 2310, HARASSMENT

Thank you for the opportunity to provide **COMMENTARY** on SB 2310, which criminalizes the use of location trackers for harassment, stalking and other criminal activities. We support the intent of this bill to protect our communities from harassment, stalking and other crimes via location trackers, and offer the following comments.

Both HRS §§ 803-42(a)(8) and 711-1106.5(1) are existing offenses that appear to address the scenarios envisioned by SB 2310. HRS § 803-42(a)(8), which is a class C felony offense, provides as follows:

§803-42 Interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited. (a) Except as otherwise specifically provided in this part, any person who:

[...]

(8) Intentionally installs or uses a **mobile tracking device** without first obtaining a search warrant or other order authorizing the installation and use of such device, unless the device is installed by or with consent of the owner of the property on which the device is installed;

shall be guilty of a class C felony.

(Emphasis added). “Tracking device” is defined in HRS § 803-41 as “an electronic or mechanical device that permits the tracking of the movement of a person or object” and excludes devices used: 1) by law enforcement in bait vehicles, or 2) the owner or lawful possessor of a vehicle to track the vehicle’s location.

HRS § 711-1106.5(1), a misdemeanor offense, provides as follows:

§711-1106.5 Harassment by stalking. (1) 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.

(Emphasis added).

For comparison, the proposed language in SB 2310, a misdemeanor offense, is as follows:

§711- Harassment by use of location tracker. (1) A person commits the offense of harassment by use of location tracker if that person uses a location tracker with the intent to harass, stalk, or perpetuate a crime against another person without their knowledge.

SB 2310 also contains specific definitions for “location tracker” that include unmanned aerial vehicles and wireless devices such as cellular telephones.

In comparison to SB 2310, the offense in HRS § 803-42(a)(8): 1) is a class C felony offense instead of a misdemeanor, and 2) does not require proof of the specific intent to harass, stalk or perpetuate a crime against another person without their knowledge. The Harassment by Stalking offense in HRS § 711-1106.5(1), in comparison to SB 2310, is: 1) more restrictive because it requires proof of a course of conduct on more than one occasion, but is also 2) less restrictive because it does not require the intent to engage in conduct without the victim’s knowledge.

HRS § 803-42(a)(8) addresses most, if not all, of the scenarios envisioned by SB 2310 because that offense only requires the intentional installation or use of a mobile tracking device without a search warrant or other order. HRS § 711-1106.5(1), as a misdemeanor offense with more detailed intent requirements, appears to address specific scenarios not addressed by SB 2310 (such as an offender using hidden location trackers for harassment purposes while also telling the victim their house and car are bugged in order to create fear and intimidation).

Thank you very much for the opportunity to provide testimony on this bill. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

SB-2310

Submitted on: 2/3/2024 2:59:37 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Individual	Support	Written Testimony Only

Comments:

I support SB2310. Please pass this bill.

Mike Golojuch, Sr.

SB-2310

Submitted on: 2/4/2024 8:57:38 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Tamara Paltin	Individual	Support	Written Testimony Only

Comments:

support

SB-2310

Submitted on: 2/5/2024 8:01:15 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Yvonne Alvarado	Individual	Support	Written Testimony Only

Comments:

I Yvonne Alvarado Support Bill SB2310

SB-2310

Submitted on: 2/7/2024 4:35:30 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

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

Comments:

Stand in SUPPORT