

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Judiciary**

February 22, 2020

H.B. No. 1732: RELATING TO DISORDERLY CONDUCT

Hearing: February 24, 2020, 2:00 p.m.

Chair Lee, Vice Chair Buenaventura, and Members of the Committee:

The Office of the Public Defender respectfully opposes HB 1732 and offers comments for the committee’s consideration. This bill creates an unnecessary subsection for behavior that can be prosecuted under several existing statutes. Furthermore, by creating a subsection directed at adolescents making statements on social media, this bill unfairly stigmatizes students and funnels them into the school-to-prison pipeline.

Our most crucial concern is that this bill will stigmatize and criminalize adolescents who need help, not to be dragged into the juvenile justice system. This bill appears to be directed at posts made on an adolescent’s social media pages, which often seek to shock or draw others’ attention. Students making such posts lack a true understanding of the seriousness and permanence of posts made on the internet. We should be seeking to increase the mental health and diversion resources available to students rather than seeking to get the courts involved at such an early stage.

This bill is predicated on the belief that the Hawai‘i Revised Statutes do not criminalize making a false or misleading threat, but that is simply not the case. There are several full misdemeanors that already cover the situation envisioned by HB No. 1732. It is illegal to “intentionally make[] a report or cause[] the transmission of a report to law-enforcement authorities” under HRS § 710-1015, or to “knowingly cause[] a false alarm of fire or other emergency to be transmitted to or within . . . any [] government agency, . . . that deals with emergencies involving danger to life or property” under HRS § 710-1014. An individual could also be charged with Terroristic Threatening in the Second Degree under HRS § 707-717 if they “threaten by word or conduct, to cause bodily injury to another person or serious damage or harm to property . . . of another or to commit a felony: in reckless disregard of the risk of terrorizing, another person; or . . . the risk of causing evacuation of a building[] [or] place of assembly.” *See also* HRS § 707-715.

By creating a petty misdemeanor offense for actions currently covered under misdemeanor statutes, this bill subjects those misdemeanor statutes to legal challenges based on misuse of prosecutorial discretion. Any of the above statutes could seemingly be used to prosecute an individual who “engages in [] conduct with an intent to convey false or misleading information”

indicating “that an activity has taken, is taking, or will take place that could result in death, bodily injury, or property damage”. *See* H.B. No. 1732 at 2-3. Hawai‘i courts have a three-part test to determine whether this situation creates a risk of unbridled prosecutorial discretion: “(1) whether defendant's alleged conduct is punishable under either of two statutory provisions; (2) whether the elements of proof essential to conviction under the statutes are exactly the same; and, (3) whether the punishment for the offense with which the defendant was charged or convicted is greater than the punishment for the alternative offense.” *See* State v. Sasai, 143 Hawai‘i 285, 296, 429 P.3d 1214, 1225 (2018) (citing State v. Modica, 58 Haw. 249, 567 P.2d 420 (1977)). Given these ripple effects, HB No. 1732 is likely to jeopardize prosecutions for the acts it seeks to address and prevent.

Thank you for the opportunity to comment on H.B. No. 1732.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.police.hawaii.gov



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE WO-KK

February 24, 2020

LATE

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 1732, Relating to Disorderly Conduct

I am Walter Ozeki, Major of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No 1732, Relating to Disorderly Conduct.

Because we live in a world where almost everyone has the ability to convey messages to a wide audience with relative anonymity, we have seen the incidences of messages being conveyed through various mediums, particularly the Internet that include threats of violence, mass violence, and/or destruction of property. In most of these instances, the messages are commonly intended as pranks or to disrupt services (such as the operations of educational facilities) and results in unnecessary expenditure of significant resources by law enforcement and disruption to the community.

As a result of previous court rulings, the current Hawaii Revised Statutes does not currently include any offenses that can be used to address false or misleading threats. In calendar year 2018, there were more than 50 such incidences, and in none of these incidences were the responsible parties prosecuted. With no accountability, these type of incidences will continue to increase.

The HPD urges you to support House Bill No. 1732, Relating to Disorderly Conduct.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Susan Ballard in black ink.

Susan Ballard
Chief of Police

Sincerely,

Handwritten signature of Walter Ozeki in black ink.

Walter Ozeki, Major
Criminal Investigation Division