



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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2008 Law Enforcement Coalition Legislative Package

HONOLULU - The Hawaii Law Enforcement Coalition has announced a legislative package of six bills designed to protect the public, to protect children and adults from sex offenders, to protect victims of domestic violence, and to reform laws regarding testimony.

The Law Enforcement Coalition comprises the Attorney General, the Prosecuting Attorneys and Police Chiefs of Hawaii's four counties, and the United States Attorney for the District of Hawaii.

The members of the Coalition support a broad range of measures to protect public safety, help law enforcement, and help restore balance to the criminal justice system. Each of the six bills included in the Coalition's legislative package has the unanimous support of every member of the Coalition.

The following bills comprise the 2008 Law Enforcement Coalition legislative package:

Public Safety

- Strengthens laws to protect the public, especially children, from sex offenders

This bill strengthens sex offender registration laws to comply with parts of Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA).

In addition, this bill adds mandatory sentencing provisions for serious child abuse and electronic enticement offenses. These provisions focus on offenses involving the dissemination or possession of child pornography and electronic enticement where the offender travels to meet with a child to engage in a sexual offense. The bill also addresses possession of particularly violent or egregious child pornography that

involves a child under the age of twelve, sadomasochistic abuse of a minor, sexual penetration of a minor, or bestiality involving a minor.

With regard to sex offender registration, all public information will be available on the Internet, thus citizens will no longer need to travel to a police station or the Hawaii Criminal Justice Data Center to access information on some offenders. Publicly available information will be significantly expanded, and will include age, a physical description, including any identifying marks such as scars or tattoos, expanded residence information, professional licenses held, an electronic link to the public criminal conviction history of the offender, the judgments of conviction documenting the covered offenses for which the offender is required to register, and a link to the law setting out the crimes for which the offender was convicted.

Registration information that offenders will need to provide to authorities will be significantly expanded, including e-mail addresses, instant messaging information, cell phone numbers, and car registration information.

In addition, the Attorney General will establish a system where the public can get periodic information about newly furnished information from covered offenders in, for example, a particular geographic location.

And, starting in 2009, offenders will be required to report to authorities in person, to update information and to have a new picture taken every year instead of every five years.

In this age of electronic communication and digital information sharing, this bill strengthens the law to protect children more adequately.

First, those guilty of First Degree Electronic Enticement of a Child, that is, those who try to entice a child, or a person whom they believe to be a child, to have sex, and then travel to meet the child, will no longer be able to receive a sentence of probation.

Internet predators develop online relationships with children to "groom" them so that they become willing to meet to engage in sexual acts. Current laws only prohibit conduct that includes actually traveling to the meeting place. This bill amends the offense of Electronic Enticement in the Second Degree to require only the agreement to meet, so that a predator may be brought to justice even if he does not actually arrive at the meeting place – for example, because he has transportation problems or realizes that he is being followed by law enforcement.

This bill creates a misdemeanor offense that focuses on "grooming" activities. The new offense of Electronic Enticement of a Child in the Third Degree prohibits the use of a computer to solicit, lure, or entice a child to engage in sexual conduct with intent to facilitate the commission of a sexual offense.

This bill also creates a class C felony offense of Indecent Electronic Display to a Child, which targets a specific grooming activity: In Internet communications with children (or with law enforcement officers posing as children), predators often transmit images of themselves masturbating or exposing their genitals in a lewd or lascivious manner as part of a scheme to entice children to engage in sexual conduct.

Finally, this bill updates the repeat offender sentencing law to include the offense of failure to comply with sex offender registration requirements, as well as the new offense of Indecent Electronic Display to a Child.

Crime

- Clarifies and strengthens several laws relating to crime.

This bill amends the offense of Murder in the Second Degree to include acts committed with the intent to cause serious bodily injury to another person or create the strong probability of causing death or serious bodily injury to another person, when those acts result in death. Those who kill another, but then claim they were only trying to seriously injure them, should not be able to avoid murder convictions. If there is an intent to cause serious injury, or assaultive acts that create a strong probability of death, and death results, a murder conviction should result, and now will, if this bill is adopted.

In addition, this bill creates new offenses and increases the penalties for certain other public administration offenses, including obstructing official investigations or proceedings; offering false statements in official matters; tampering with physical evidence; coercing, intimidating, or otherwise tampering with witnesses; and retaliating against witnesses or jurors. These offenses obstruct the performance and undermine the integrity of government functions and the justice system. Current laws do not reflect the seriousness of these offenses or adequately deter them. For example, this bill creates the specific felony offense of "obstruction of criminal investigations", makes tampering with government records in certain serious situations a felony, makes tampering with physical evidence a felony, makes false swearing in official matters a felony, makes tampering with a witness a felony, and makes retaliating against a witness a class B felony instead of a class C felony.

Current law requires all individuals convicted of a felony offense to provide a DNA buccal swab sample for the statewide DNA data bank, which can be used to solve crimes, including cold cases, and exonerate the innocent. But refusal to comply with this requirement is currently only a misdemeanor offense – an unlikely deterrent for convicted felons. This bill makes knowing refusal to comply a felony.

Law enforcement officers sometimes need access to vital statistics records during the course of investigating or prosecuting a crime. For example, access to a birth certificate case might be necessary to determine the age of a child victim in a sexual assault case. Current law does not allow the Department of Health to give law enforcement officers access to vital statistics records. This bill provides a narrow exception that allows such

access, but only when necessary in relation to law enforcement duties, and only when the request for access is signed under penalty of criminal prosecution for misuse. This will allow more timely investigation of crimes where vital statistics records are needed.

Current law allows prosecutions of certain felony offenses to be initiated by information charging. Information charging has an important role in the criminal justice system because it spares victims and witnesses the time, and in some cases the trauma, of testifying at probable cause hearings. This bill provides that Methamphetamine Trafficking in the Second Degree, Unauthorized Entry in a Dwelling, Unauthorized Possession of Confidential Personal Information, and all class C felonies for failure to comply with sex offender registration requirements may be initiated by information charging.

Finally, this bill clarifies that courts must determine that defendants who plead guilty or no contest understand the possible effect of the plea on their alien status, but that courts need not read the language of the advisement statute verbatim.

"Use Immunity"

- Amends the state constitution to allow prosecutors to compel the testimony of a witness claiming Fifth Amendment privilege, but prohibits use of that testimony in any criminal proceeding against a witness, except prosecution for perjury or false statement.

It is critically important to the successful prosecution of criminal cases in Hawaii that the State has the means to compel the testimony of witnesses in possession of vital information. Currently, if a witness asserts a privilege to refuse to testify or provide evidence on the ground of self-incrimination, the State can compel that witness's testimony only by providing that witness complete and permanent "transactional immunity" from any criminal prosecution ever for or on account of any act, transaction, or matter concerning which the witness is required to testify. This severely burdens Hawaii's prosecutors.

By comparison, in prosecutions by the United States and most of Hawaii's sister states, a witness's testimony can be compelled, so long as the testimony, and any evidence and information derived from that testimony, cannot be used against that witness in any criminal case, except one for perjury, false statement, failing to comply with the order to testify, or similar offenses. Such a system, called "use immunity," has been upheld as complying with the Constitution of the United States by the United States Supreme Court.

"Use immunity" appropriately balances society's need to prosecute serious criminal cases with the rights of individuals. The current system, which conditions compelling testimony on a grant of "transactional immunity," makes society pay too high a price for

such testimony and severely impedes the ability of prosecutors to obtain convictions in appropriate cases.

Hawaii's legislature enacted a "use immunity" statute, but the Hawaii Supreme Court struck it down as violating Hawaii's Constitution. Thus, amending Hawaii's Constitution is the only option if "use immunity" is to be allowed in Hawaii.

Testimony of Defendants in Criminal Cases

- Amends the state constitution to allow testifying defendants in criminal cases to be impeached with evidence of prior convictions for crimes involving dishonesty.

In federal court and in the courts of almost all other states, when a criminal defendant or any other witness testifies, the witness's prior convictions for crimes involving dishonesty can be used to impeach the witness -- that is, to help the jury decide if the witness is telling the truth. But in Hawaii, a state supreme court case prohibits the use of such prior convictions to impeach defendants in criminal cases, even though victims and other witnesses to crime can be impeached in this way. Thus, in a rape case tried today in Hawaii state court, if both the victim and the testifying defendant have been convicted of perjury in the past, the jury will learn that the *victim* has a conviction but will not learn that the *defendant* has one.

Hawaii is virtually unique in this respect, and as a result, the truth-finding function of trials suffers. This amendment would provide that, in a criminal case, the judge or jury can use evidence of prior convictions of crimes involving dishonesty to evaluate a testifying defendant's credibility, to the same extent as with any other testifying witness. It will help juries find the truth and render fairer verdicts.

Domestic Violence

- Helps protect victims of domestic violence

The current statute on Abuse of Family or Household Member sets two levels of abuse, felony and misdemeanor. There are many instances of abuse when the facts require amendment to Harassment, a petty misdemeanor. Some true misdemeanor cases are also pled down to Harassment when the prosecution encounters problems with proving the case, including when victims or other witnesses refuse to testify or are not available. It is appropriate to treat these cases as abuse cases. This bill addresses this issue by providing a petty misdemeanor level of Abuse of Family or Household Member in the Third Degree. Currently, defendants in cases that are amended to Harassment are not necessarily ordered to participate in Domestic Abuse Intervention programs, nor does a Harassment conviction count for sentencing enhancements if the abuser reoffends.

This bill requires petty misdemeanor level offenders to participate in Domestic Violence Intervention programs. It also increases the time period in which prior abuse convictions can be used for sentencing enhancements from two years to ten years.

And it separates the current felony and misdemeanor level family abuse offenses into separate sections to assist in keeping clear records.

Protect Victims of Domestic Violence Act

- Raises the seriousness of violent offenses committed by those subject to certain types of protective orders.

Domestic violence is a terrible problem in Hawaii and throughout our nation. Victims of domestic violence often endure extended periods of mental abuse, intimidation, harassment, terrorization, and physical violence. And all too often they are killed by their tormentors. Unfortunately, even with intervention by the police and the court system, the abuse and violence may not end. Current laws simply do not provide adequate protection nor do they provide adequate deterrence. This bill will help.

This bill amends the offenses of Murder in the First Degree, Murder in the Second Degree, Assault in the Second Degree, and Terroristic Threatening in the First Degree by raising the level of each offense when the offense is committed against victims who have obtained certain types of protective orders, by those who are the subjects of the protective orders. Thus, what was misdemeanor assault will become felony assault if committed by a person against whom the victim has obtained a certain type of protective order. Misdemeanor terroristic threatening will become felony terroristic threatening, manslaughter will become second degree murder, and second degree murder will become first degree murder. These increased penalties will deter abusers and give law enforcement more opportunity to protect victims. Those protected will include spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons who have or have had a dating relationship.

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