

REPORT OF THE COMMITTEE ON PARKS, ENTERPRISE SERVICES, AND CULTURE AND THE ARTS

Voting Members:

Augie Tulba, Chair; Val A. Okimoto, Vice-Chair;
Radiant Cordero, Andria Tupola

Committee Meeting Held
January 11, 2023

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Parks, Enterprise Services, and Culture and the Arts which considered Bill 52 (2022) entitled:

"A BILL FOR AN ORDINANCE RELATING TO BULLYING OF YOUTH,"

which passed second reading and was the subject of a public hearing held at the November 2, 2022 Council meeting, reports as follows:

The purpose of Bill 52 (2022) is to prevent the bullying of youths in City programs and on City property; to prevent retaliation against persons who report or participate in any investigation into a suspected incident of youth bullying; and to provide for the establishment of City policies and procedures for the handling of suspected incidents of the bullying of youths in City programs and on City property.

Managing Director Michael Formby testified on behalf of the City Administration in support of the measure.

Your Committee received written testimony in support of the Bill from one individual.

Your Committee considered and approved a proposed, hand-carried CD1 version, which makes the following amendments:

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

JAN 25 2023

COMMITTEE REPORT NO.

9

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- A. Updates the bill to reflect that the bill is amending the Revised Ordinances of Honolulu 2021 instead of the Revised Ordinances of Honolulu 1990.
- B. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee on Parks, Enterprise Services, and Culture and the Arts is in accord with the intent and purpose of Bill 52 (2022), as amended herein, and recommends that it pass third reading in the form attached hereto as Bill 52 (2022), CD1. (Ayes: Cordero, Okimoto, Tulba, Tupola – 4; Noes: None)

Respectfully submitted,



Committee Chair

At the 1/25/23 Council meeting, the Bill was further amended and subsequently passed Third Reading as Bill 52 (2022), CD1, FD1.

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A BILL FOR AN ORDINANCE

RELATING TO BULLYING OF YOUTH.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and purpose. The Council finds that:

Bullying is a form of youth violence that can undermine the dignity, sense of security, self-confidence, or self-esteem of youths; impede their full participation in educational or social activities; and prevent them from achieving their maximum potential. Bullying is antithetical to the City's policy of mutual respect, tolerance, and acceptance, and its mission to protect and advance the general welfare, safety, and aspirations of its youths.

Bullying can harm youths who are bullied as well as those who bully or witness bullying. Targeted youths report experiencing psychosomatic and mental health problems, including depression, anxiety, and loneliness that can persist into adulthood. These injuries can lead to poor academic performance, a lack of friends, substance abuse, or self-harm. Those who bully are often bullied themselves, can suffer from mental health problems, and are at an increased risk of engaging in criminal behavior or domestic violence when they are older.

Bullying is common among school-aged children. According to the Centers for Disease Control and Prevention ("CDC"), almost 25 percent of high school students reported being bullied in 2019. Some youths are targeted more than others because of a protected characteristic, such as race or ethnicity, disability, religion, or gender. For instance, almost 40 percent of high school students who identify as lesbian, gay, or bisexual and more than 30 percent of female high school students experienced bullying at school or electronically in the last year, compared to 22 percent of heterosexual and 19 percent of male high school students.

Bullying can take many forms, including physical bullying (e.g., hitting, spitting, impeding a youth's legitimate passage), verbal bullying (e.g., teasing, name-calling), and relational bullying (e.g., isolating, spreading rumors). Although bullying frequently occurs on school grounds, it also takes place outside of school or remotely through the use of technology ("cyberbullying").

According to the CDC, factors that can prevent bullying include, among other things, creating protective community environments for youths and interventions to lessen harm and prevent future risk.



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Accordingly, the purpose of this ordinance is to prevent the bullying of youths in City programs and on City property; to prevent retaliation against persons who report, or participate in any investigation into, a suspected incident of youth bullying; and to provide for the establishment of City policies and procedures for the handling of suspected incidents of the bullying of youths in City programs and on City property.

SECTION 2. Chapter 2, Revised Ordinances of Honolulu 2021 ("The Mayor and Executive Agencies—Additional Powers, Duties, and Functions") is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"ARTICLE __: BULLYING OF YOUTH PROHIBITED

§ 2-__.1 Declaration of legislative intent—Purpose.

The purpose of this ordinance is to prevent bullying and:

- (1) Create a protective environment for youths by prohibiting bullying in all city programs and on all city property, and by prohibiting retaliation against persons who witness, report, or participate in any investigation into a suspected incident of bullying; and
- (2) Provide for intervention in suspected incidents of bullying by requiring city agencies and departments that interact with youths to implement policies and procedures for reporting and identifying incidents of bullying, protecting the targeted youth, and imposing sanctions on the perpetrators.

§ 2-__.2 Definitions.

For the purposes of this article, the following definitions apply unless the context clearly indicates or requires a different meaning:

Adverse Action. Any action that would dissuade a reasonable person from reporting or participating in an investigation into a suspected incident of bullying.

Bullying. Any unwanted severe, persistent, or pervasive conduct against a youth by another person that:

- (1) May be based on the targeted youth's physical appearance or attire, or their perceived or actual sex, sexual orientation, gender identity, gender expression, race, national origin, ethnicity, age, religion, physical or mental



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disability, pregnancy status, socioeconomic status, or their association with others with such characteristics;

- (2) Inflicts harm or can reasonably be expected to inflict harm on the targeted youth, including by:
 - (A) Placing the targeted youth in reasonable fear of physical injury or causing physical injury to their person, or damage to or loss of their property;
 - (B) Causing the targeted youth psychological injury, social injury, or educational injury; or
 - (C) Substantially disrupting or materially interfering with the targeted youth's ability to participate in or benefit from the city's programs, public services, or public resources; or
- (3) Substantially disrupts or materially interferes with the orderly operation of the city's programs, property, public services, or public resources.

Bullying includes cyberbullying; physical bullying; relational bullying; verbal bullying; other severe, persistent, or pervasive harmful conduct against a youth that serves no legitimate purpose, such as stalking the youth or repeatedly calling, texting, or emailing the youth despite the youth's requests to stop; and encouraging, supporting, or joining in with others on the severe, persistent, or pervasive harmful conduct against a youth.

City Partner. Any person who:

- (1) Enters into a written agreement with the city to provide goods or services to or on behalf of the city, or to collaborate or cooperate with the city on the provision of public services, that are directed in whole or in part toward youths; or
- (2) Obtains a permit from the city to hold an activity on a public street, sidewalk, or other city property, including but not limited to a parade, street fair, or protest.

City partner excludes any person who enters into a written agreement with the city primarily for the purpose of providing grant funding or charitable contributions to the city.



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City Property. Any grounds, buildings, or facilities that are owned, leased, or otherwise controlled by the city, excluding property owned by the city but under the control of the Hawaii department of education.

City Program. Any program, service, activity, event, or function that is provided, sponsored, or funded, in whole or in part, by the city.

Cyberbullying. Bullying through the use of technology or any form of electronic communication, including a transfer of words, signs, signals, images, sounds, or other data through a computer, tablet, cell phone, or other electronic device that has the capability of sending and receiving data. Cyberbullying includes, but is not limited to:

- (1) Sending, posting, or otherwise spreading false rumors, derogatory or defamatory material, or highly private or embarrassing information about the targeted youth, such as nude images of the targeted youth;
- (2) Threatening to hurt the targeted youth or telling the targeted youth to injure or kill themselves or other youth;
- (3) Pretending to be someone else online or "catfishing" in order to deceive the targeted youth into providing embarrassing or personal images or information about the targeted youth, then sharing that information with others; and
- (4) Publicly identifying or publishing private information about a targeted youth.

Cyberbullying may occur through electronic mail, apps, social media, text messaging, direct or instant messaging, or in chatrooms, online forums, online gaming communities, message boards, and other electronic forums.

Gender Expression. The manner in which a person represents or expresses their gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

Gender Identity. A person's internal, deeply-felt sense of being male, female, or other, whether or not that gender identity is different from the person's physiology or assigned sex at birth.

Physical Bullying. Hitting, slapping, shoving, kicking, tripping, spitting on, or otherwise touching a targeted youth in an offensive manner, threatening any of the foregoing behaviors, or impeding the legitimate passage of the targeted youth.



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Relational Bullying. Isolating or excluding a targeted youth, causing a targeted youth to feel rejected socially, creating or spreading hurtful or mean rumors or lies about the targeted youth, or manipulating the targeted youth's relationships with their peers.

Retaliation. An adverse action taken against a person who witnessed, or who has made or intends to make a good faith report of, or otherwise participate in an investigation into, a suspected incident of bullying that occurred in a city program or on city property.

Targeted Youth. A youth who is the target of bullying.

Verbal Bullying. Teasing, insulting, or humiliating a targeted youth, taunting or attempting to provoke a violent response from the targeted youth, making unwanted sexual comments to the targeted youth, or speaking to the targeted youth using threatening, offensive, or coarse language.

Youth. An individual 18 years of age or younger or any student enrolled in a public or private high school, even if over 18 years of age.

§ 2-___.3 Prohibitions.

(a) The following acts are prohibited:

- (1) Bullying of a targeted youth by any person while actively participating in a city program or on city property; and
- (2) Retaliation by any person.

(b) This section may not be construed to apply to any constitutionally-protected activity or speech.

§ 2-___.4 City partners.

Each city partner is expected to comply with this article in the performance of their agreement with the city; in the provision of any goods or services for, on behalf of, or in collaboration with the city; or in exercising a permit that has been granted to them by the city.

§ 2-___.5 Agency and department policies.

(a) Each executive city agency or department that provides one or more city programs in which youths may participate, or that manages or controls city



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property where youths are regularly present or congregate, shall establish a clear policy for identifying, reporting, responding to, and preventing bullying and retaliation, as set forth in this article. Among other things, the policy must include the following components:

- (1) Annual training on identifying and preventing bullying, and on the department's or agency's policies and procedures related to bullying, for all staff whose duties involve interacting with youths;
- (2) Procedures for reporting, including anonymous reporting, and promptly investigating suspected incidents of bullying or retaliation, and for promptly protecting targeted youths from further incidents of bullying and for protecting persons from retaliation;
- (3) Sanctions and remedies for bullying or retaliation, including but not limited to reprimands; bans or suspensions from city programs or city property; permit revocation; and removal from city property; provided that the sanctions and remedies must:
 - (A) Be designed to stop the bullying or retaliation, protect targeted youths or targets of retaliation, and prevent further occurrences of bullying or retaliation; and
 - (B) Account for the unique circumstances of each case, including but not limited to the nature, severity, and pervasiveness of the offense, and the disciplinary history, age, and developmental status of the persons involved;
- (4) An appeals process for parties dissatisfied with the outcome of a bullying or retaliation investigation;
- (5) Procedures for notifying the parents or guardians of youths suspected of bullying another youth or of retaliation, as appropriate, and procedures for notifying the parents or guardians of a targeted youth with the youth's consent and as appropriate;
- (6) Procedures for referrals to social or counseling services for targeted youths, youths who bully, and youths who witness bullying;
- (7) Procedures to report suspected incidents of bullying or retaliation to law enforcement or the State department of education, where appropriate; and



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- (8) Procedures for ensuring that the city partners of the agency or department comply with the requirements of this article.
- (b) The policies and procedures established by agencies and departments pursuant to this section must be:
 - (1) Maintained on a publicly-accessible platform or agency or department website; and
 - (2) Updated at least every two years to improve the agency's or department's response to incidents of bullying or retaliation.

§ 2-___.6 Annual report.

Each agency or department subject to § 2-___.5 shall submit a report to the mayor's office no later than January 1 of each year, regarding the aggregate incidents of bullying that have been reported; the agency's or department's response thereto, and an assessment of the effectiveness of its bullying policy; and any changes that will be implemented to improve its response to incidents of bullying or retaliation. The reports may not disclose the names or other identifying information by which either suspected violators of this article or targeted youth may be identified.

§ 2-___.7 No new private right action.

This article does not create a new private right of action or provide a statutory basis for a claim for damages against the city, its employees, or city partners.

§ 2-___.8 Severability.

If any provision of this article, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end, the provisions of this article are severable."



CITY COUNCIL
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HONOLULU, HAWAII

ORDINANCE _____

BILL 52 (2022), CD1

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SECTION 3. This ordinance takes effect upon its approval.

INTRODUCED BY:

Augie Tulba

DATE OF INTRODUCTION:

September 27, 2022

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu