

State of Hawaii
Department of the Attorney General



**REPORT OF THE TEMPORARY
ADVISORY COMMISSION ON
COMPUTER CRIMES LAWS**

*Submitted to
The Twenty-Second State Legislature
Regular Session of 2003
Pursuant to Act 33, SLH 2001*

TABLE OF CONTENTS

	INTRODUCTION	1
I.	WHETHER THE 2001 STATUTORY CHANGES TO THE STATE'S COMPUTER CRIMES LAWS ALLOW FOR THE COMPREHENSIVE PROSECUTION OF COMPUTER CRIMES WITHOUT INHIBITING LEGITIMATE COMPUTER ACTIVITIES.....	2
II.	CONCLUSION.....	3

INTRODUCTION

The Temporary Advisory Commission On Computer Crimes Laws (the Commission) was created in 2001 by the Legislature. The purpose of the Commission was to review the implementation of new computer crimes laws to determine whether the new statutes allow for the comprehensive prosecution of computer crimes without inhibiting legitimate computer activities.

The Commission met on December 9, 2002, at the Department of the Attorney General. Deputy Attorney General Mark G. McConnell was the designated representative for the Attorney General. Brent Osterstock, Deputy Prosecuting Attorney, represented the Maui Prosecutor's Office. Glenn Cuomo represented the Maui Police Department. The Honorable Michael Soong, the Prosecuting Attorney for the County of Kauai represented his office. Deputy Prosecuting Attorney Lori Nishimura represented the Honolulu Prosecutor's Office. Les Nakamura represented the Information and Communications Services Division of the State Department of Accounting and General Services. Ted Chinn, a former Assistant Public Defender and currently an attorney in private practice handling criminal cases, represented the State Public Defender. Dan Hanagami represented the Honolulu Police Department.

I.

WHETHER THE 2001 STATUTORY CHANGES TO THE STATE'S COMPUTER CRIMES LAWS ALLOW FOR THE COMPREHENSIVE PROSECUTION OF COMPUTER CRIMES WITHOUT INHIBITING LEGITIMATE COMPUTER ACTIVITIES

The universal experience of the Commission is that as of the present date, there have not been sufficient cases to which the new statutes have been applied to make an informed determination about the statutes' impact on legitimate computer activities. Commission members were only aware of two cases involving juveniles and improper emails that related to the new statutes and it did not appear that charges had been filed in those matters. There have not been any indictments under the new statutes, nor have there been any major investigations based on the new statutes. Although Commission members were aware of computer crimes cases that predated the new statutes, and some cases that came after the statutes became effective, none of these cases provided insight on the question before the Commission. As a result, the Commission concluded that it was unable to make a determination at this time as to whether the new statutes inhibit legitimate computer activities.

The Commission discussed some possible reasons for the current lack of investigation and prosecution experience with the new statutes. One reason is that the area of computer crime investigation is relatively new and requires further development of unique law enforcement skills and capabilities. Additionally, such investigations are dependent upon the purchase of costly computers and related equipment. Although efforts to build these capabilities are underway in several state and local agencies, such

efforts are in their infancy and have not yet reached full capability. As a result, law enforcement agencies throughout the state have limited skilled personnel and equipment to effectively investigate computer crimes and generate cases under the new statutes.

At least one Commission member, who is a prosecutor, expressed the opinion that some cases that have a computer fraud nexus are not being prosecuted under the new computer fraud statutes. For example, there is currently a statewide problem with theft of credit cards that are then used by thieves to make Internet purchases as well as in-person purchases from stores. Such cases have generally been prosecuted under the traditional theft or fraudulent use of credit card statutes.

II.

CONCLUSION

There is insufficient actual law enforcement experience at the present time to reach a conclusion as to the impact of the 2002 computer crimes laws on legitimate computer activities.