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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i

March 18, 2016

RE: H.B. 1044; RELATING TO SEXUAL ASSAULT.

Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony supporting the intent of H.B. 1044, H.D. 1 with proposed amendments regarding the definition of “position of trust, power, authority, or supervision over that minor” and the scope of the overall bill.

The purpose of this bill is to protect minors between the ages of sixteen (16) and seventeen (17) years of age from individuals who hold a position of trust, power, authority, or supervision over the said minor.

The Department agrees that persons of authority over minors should not be permitted to abuse their position by engaging in sexual contact and/or sexual penetration with those minors, regardless of whether the minor wishes to grant their consent to the sexual contact and/or sexual penetration. Nevertheless, our Department has a number of concerns with the specific language of this bill.

First, H.B. 1044, H.D. 1, does not appear to provide a definition or any guidelines regarding what a “position of trust, power, authority, or supervision” entails. It is not clear whether a position of trust includes but is not limited to school teachers, coaches, priests, police officers, etc. Each group that is included in this definition could also potentially create additional questions or concerns. Second, H.B. 1044, H.D. 1, attempts to address the concerns of our Department regarding application of this bill to Sexual Assault in the First, Second, and Third Degree with the addition of “sexual penetration” in subsection (d) of this bill. However, our Department would respectfully recommend two amendments. First, removing the word “or

sexual penetration” from subsection (d) of H.B. 1044, H.D. 1, as §707-733, H.R.S. currently encompasses only sexual contact. Second, the following subsections should be added to §707-731, H.R.S.:

- “(d) The person knowingly engages in or causes sexual contact or sexual penetration with a person who is at least sixteen years old but less than eighteen years old and the actor holds a position of trust, power, authority, or supervision over that minor; provided that:
- (i) The actor is not less than five years older than the minor; and
 - (ii) The actor is not legally married to the minor”

Our Department believes that the intent of this bill is to protect minors between the ages of sixteen and seventeen who currently have the capacity to give consent to sexual contact and sexual penetration. By implementing these amendments, this bill would avoid the unintended consequence of allowing a minor (sixteen (16) and seventeen (17)) to consent to sexual penetration but not to sexual contact, as well as ensuring that an individual who engages in sexual penetration with a minor (ages sixteen (16) and seventeen (17)) is subject to stricter penalties from an individual who engages in sexual contact with a minor (ages sixteen (16) and seventeen (17)) alone.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of H.B. 1044, H.D. 1, with amendments. Thank you for this opportunity to testify on this matter.

Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on
Judiciary and Labor

March 18, 2016

H.B. No. 1044: RELATING TO SEXUAL ASSAULT

Chair Keith-Agaran and Members of the Committee:

We oppose passage of H.B. No. 1044 which makes sexual contact or sexual penetration illegal if the subject is between sixteen and eighteen years of age and the perpetrator is least five years older than the subject and the perpetrator holds a position of trust, power, authority, or supervision over the subject.

Presumably, this bill is aimed at persons such as teachers or employers who are engaged in sexual contact or sexual penetration with a teenager between sixteen and eighteen. The bill would not address sexual contact with those younger than sixteen since Sexual Assault in the Third Degree already punishes those who perpetrate sex acts against those less than sixteen years of age as a felony.

The bill contains no definition or explanation as to the terms "trust," "power," "authority," and "supervision." These terms are so broad that they could apply to an endless number of relationships which the law might not intend to criminalize. Moreover, the age group which is targeted (16-18 years) is a group which is oftentimes beginning to experiment sexually therefore presenting many opportunities for unjustified prosecutions since consent is not a defense in this proposed offense.

Thank you for the opportunity to provide testimony in this matter.