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THE HONORABLE GREGG TAKAYAMA, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i

February 4, 2016

RE: H.B. 2099; RELATING TO LAW ENFORCEMENT.

Chair Takayama, Vice-Chair Yamashita, and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in **support** of House Bill 2099.

The purpose of H.B. 2099 is to define “person in custody” as that term is used in the offenses of Sexual assault in the second and third degree. As the Committee is likely aware, our Department has previously argued that the interpretation of this term—even without the bill’s additional language—could include traffic stops, however, at least one court has declined to adopt that interpretation. Thus, we greatly appreciate the Legislature’s agreement with our interpretation, and efforts to clarify it accordingly.

With regards to the exact language used to define this term, we would just urge the Committee to carefully consider each word, to minimize the likelihood of having any negative, unintended consequences. While we do not have specific alternative language to offer at this point, we do have some concerns that the phrase “under the control of” may be overly broad. In the alternative or in conjunction, it may also be that the term itself—“person in custody”—could be improved upon, to help clarify the intent.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage H.B. 2099, and asks that the discussions and evolution of this bill be allowed to continue. Thank for you the opportunity to testify on this matter.



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: February 11, 2016

TO: The Honorable Gregg Takayama, Chair
The Honorable Kyle Yamashita, Vice Chair
House Committee on Public Safety

FROM: The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women and Children

RE: Testimony in Support of H.B. 2099
Relating to Law Enforcement

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Councilmember
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Gidget Ruscetta

Joshua A. Wisch

Good afternoon Chair Takayama, Vice Chair Yamashita, and members of the House Committee on Public Safety.

The Sex Abuse Treatment Center (SATC) supports H.B. 2099, which defines "person in custody" as used in the offenses of sexual assault in the second and third degrees to mean a person who is stopped by or under the control of a law enforcement officer for official purposes.

Hawai'i's sexual assault laws generally make it illegal for law enforcement officers to subject persons in their custody to sexual penetration or sexual contact. This is based on the principle that a person who is being held in the custody of law enforcement officers is placed at a sharp power imbalance relative to those officers, and therefore meaningful consent is not possible under those circumstances.

However, the current law does not cover situations where a law enforcement officer inarguably has power and control over another person, but has not effected an arrest, and therefore the other person is not technically in their "custody" as that term is currently defined and interpreted in Hawaii.

This was demonstrated by a recent, well-publicized local case where a Honolulu Police Department patrol officer stopped a 17 year old driver for speeding and fondled her breasts, but could not be convicted for committing the crime of sexual assault in the third degree because, although the driver was not free to leave and was within the officer's control at the time of the sexual contact, she had not been placed under arrest.

H.B. 2099 would prevent the recurrence of this injustice, by broadening the definition of "person in custody" to address the specific situation of one who is subjected to a traffic stop or is in the process of providing documents pursuant to that stop, as well as

other scenarios where a person is stopped by or under the control of law enforcement officers for official purposes but were not placed under arrested.

Therefore, we respectfully urge you to join SATC in supporting H.B. 2099.