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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

February 23, 2016

RE: S.B. 2193, S.D. 1; RELATING TO LAW ENFORCEMENT.

Chair Keith-Agaran, Vice-Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of Senate Bill 2193, S.D. 1.

The purpose of S.B. 2193, S.D. 1 is to define “person in custody” as that term is applies to Sexual assault in the second (§707-731 H.R.S.) and third degree (§707-731 H.R.S.). 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 the term “person in custody”, we would urge the Committee to carefully consider each word, to minimize the likelihood of having any negative, unintended consequences. Specifically, we have some concerns regarding the phrase “under the control of” which as currently written may be overbroad and beyond the intent of S.B. 2193, S.D. 1. Our Department believes that the proposed definition of “person in custody” could be improved upon, to help clarify the intent and avoid unforeseen consequences. While we do not have specific alternative language to offer at this point, we would note that §707-731 and §707-732, H.R.S., cite to section of §710-1000 for the definition of “law enforcement officer”. Likewise, §710-1000 H.R.S., defines the term “custody” as “restraint by a public servant pursuant to arrest, detention, or order of a court.” This definition may provide a working framework for application to S.B. 2193, S.D. 1, but we would still caution the Committee to carefully consider the wording that is ultimately used for this particular application.

For all of the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu supports S.B. 2193, S.D. 1, and asks that the discussions and evolution of this bill be allowed to continue. Thank for you the opportunity to testify on this matter.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for SB2193 on Feb 23, 2016 09:01AM
Date: Monday, February 22, 2016 5:30:12 PM

SB2193

Submitted on: 2/22/2016

Testimony for JDL on Feb 23, 2016 09:01AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Susan J. Wurtzburg	American Association of University Women, Hawaii	Support	No

Comments: Needed bill to diminish the chances of a recurrence of police perpetrated sexual assault, and in the case of such circumstances reoccurring, at least to allow for prosecution of the officer involved.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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