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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO
SB 2312 – RELATING TO THE PENAL CODE

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committee on Judiciary and Labor
February 1, 2016, 9:30 a.m., Conference Room 016

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, OPPOSES SB 2312 – Relating to the Penal Code. Our Office does not oppose removal of the terms “homosexuality” and “lesbianism,” and in fact, suggests that these terms also be removed from the definition of “sexual conduct” within Section 712-1210, Hawaii Revised Statutes (“HRS”).

The purpose of SB 2312 is to amend the definition of “sexual conduct,” as that term is defined in Sections 707-750, -751 and -752 (child pornography offenses). While our Office appreciates the Legislature’s effort to clarify these definitions, we strongly believe it would be inappropriate to remove the term “sexual penetration” from these definitions, as this phrase is clearly defined in HRS §707-700, and its use is well-established among local prosecutors, defense attorneys, and our courts. Moreover, our Office is not aware of any pressing need or reason to amend this portion of the definition.

The language proposed in SB 2312 at page 1, lines 4-7; line 15 of page 1 through line 1 of page 2; and page 2, lines 9-12 contains a number of terms that are ambiguous, undefined and unfamiliar to our courts and attorneys, and thus it would likely lead to significant confusion or disrupt existing case law. Moreover, this language is vastly different from any other definition of the term “sexual conduct” that is found in Hawaii’s Penal Code. While our Penal Code does contain several different definitions of the term “sexual conduct,” these

definitions are at least similar to one another currently, using much of the same or cross-referenced terminology.

To replace the well-defined and well-established term, "acts of...sexual penetration," with unclear and unfamiliar language, without any pressing reason or need to do so, would be unwise.

Accordingly, we OPPOSE SB 2312. We request that your Committee HOLD the Bill.

Thank you very much for the opportunity to provide testimony on this Bill.



February 1, 2016

To: Senator Gilbert Keith-Agaran, Chair
Senator Maile Shimabukuro, Vice Chair and
Members of the Committee on Judiciary and Labor

From: Jeanne Y. Ohta, Co-Chair

RE: SB 2312 Relating to the Penal Code

POSITION: SUPPORT

The Hawai'i State Democratic Women's Caucus writes in support of SB 2312 Relating to the Penal Code.

Laws defining criminal offenses should not codify outdated attitudes towards specific demographic groups—in this case LGBT communities. By singling out “acts of homosexuality and lesbianism” as comparable to bestiality, necrophilia, and sadomasochistic abuse, while excusing identical acts of heterosexuality, the statute reflects historical stigmatization of LGBT communities.

As currently written, the law presents likely constitutional problems due to vagueness, as it fails to adequately define what specifically constitutes “acts of homosexuality and lesbianism.” The Hawai'i State Constitution and the Constitution of the United States provide due process protections against laws that permit citizens to identify what behaviors are illegal.

The current definition of “sexual conduct” is also out of step with comparable federal child pornography laws, which address sexual intercourse and sexual contact “whether between persons of the same or opposite sex.”

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. It is because of this mission that we respectfully request that the committee pass this bill.



Hawaii Women's Coalition

Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

LATE TESTIMONY

DATE: February 1, 2016

TIME: 9:30 a.m

PLACE: Conference Room 16

STRONG SUPPORT FOR SB 2312 that repeals antiquated language with respect to sex conduct

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro, and members.

The Coalition supports SB 2312, which redefines “sexual conduct” in the Hawai’i statutes that describe the crimes of promotion of child abuse in the first, second and third degrees.

The “promotion of child abuse” statutes include Hawaii’s child pornography laws, which criminalize the creation, possession, or use of materials that depict children engaged in or used for sexual conduct.

Sexual conduct is currently defined as “acts of *masturbation, homosexuality, lesbianism*, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor (emphasis added).”

Although we strongly agree with the Hawai’i Penal Code’s ban on child pornography and that perpetrators be convicted, we also believe that laws defining criminal offenses should not codify unjust and antiquated attitudes towards specific demographic groups, in this case members of the lesbian, gay, bisexual and transgendered (LGBT) communities.

By singling out unspecified “acts of homosexuality and lesbianism” as being comparable with bestiality, deviate sexual intercourse (necrophilia), and sadomasochistic abuse, while excusing identical acts of heterosexuality, the statutes reflect historical stigmatization of the LGBT communities. The present law could be broadly construed to bar the depiction of two boys or two girls engaged in such ‘acts of homosexuality or lesbianism’ as holding hands or kissing, although a depiction of a boy and a girl doing the same thing would not be criminalized.

It is also our understanding that the law, as currently written, presents likely constitutional problems due to vagueness, as it fails to adequately define what constitutes proscribed “acts of homosexuality and lesbianism.”


Both the Hawai’i State Constitution and the Constitution of the United States provide due process protections against laws that lack sufficient clarity to permit citizens to identify what behaviors are illegal. Moreover, the current Hawai’i law is not in sync with federal child pornography laws, which address the depiction of sexual intercourse and contact “whether between persons of the same or opposite sex.”

By more clearly defining the offending behavior that the law intends to criminalize, the proposed amendment would make the definition of “sexual conduct” in Hawaii’s promoting child abuse statutes better match the one used in federal law concerning similar subject matter and remove the stigmatizing and discriminatory references to “acts of homosexuality and lesbianism.”

Please pass this important bill out of committee.

Mahalo for the opportunity to testify,
Ann S. Freed Co-Chair, Hawai'i Women's Coalition
Contact: annsfreed@gmail.com Phone: 808-623-5676



From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 01, 2016 4:12 PM
To: JDLTestimony
Cc: 
Subject: *Submitted testimony for SB2312 on Feb 1, 2016 09:30AM*

SB2312

Submitted on: 2/1/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|------------------|--------------|--------------------|--------------------|
| Kristi Adachi MD | Individual | Support | No |

Comments:

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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To: JDLTestimony
Cc: [REDACTED]
Subject: *Submitted testimony for SB2312 on Feb 1, 2016 09:30AM*

SB2312

Submitted on: 2/1/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------|--------------|--------------------|--------------------|
| Carl Campagna | Individual | Support | No |

Comments:

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To: JDLTestimony
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Subject: *Submitted testimony for SB2312 on Feb 1, 2016 09:30AM*

SB2312

Submitted on: 1/31/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------------|--------------|--------------------|--------------------|
| Susan J. Wurtzburg | Individual | Support | No |

Comments:

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