

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE **WO-KK**

March 13, 2018

The Honorable Brian T. Taniguchi, Chair  
and Members  
Committee on Judiciary  
State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 016  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

SUBJECT: House Bill No. 1850, H.D. 1, Relating to Pornography

I am Walter Ozeki, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD believes that the replacement of "guardian" with the term "legal guardian" will clarify person(s) who are legally excluded within Section 712-1215 of the Hawaii Revised Statutes. It also eliminates this legal loophole and ensures that the statute remains consistent with the legislative intent.

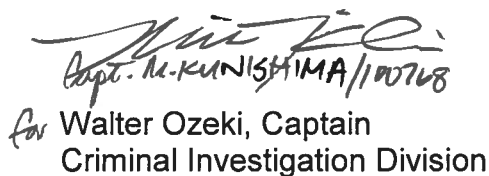
The HPD supports House Bill No. 1850, H.D. 1, Relating to Pornography, and urges you to pass this bill.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Susan Ballard  
Chief of Police

  
Capt. W. KUNISHIMA/1100768  
for Walter Ozeki, Captain  
Criminal Investigation Division

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE BRIAN T. TANIGUCHI, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2018**  
**State of Hawai`i**

March 13, 2018

**RE: H.B. 1850, H.D. 1; RELATING TO PORNOGRAPHY.**

Chair Taniguchi, Vice-Chair Rhoads and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony, supporting the intent for H.B. 1850, H.D. 1, with suggested amendments.

The purpose of H.B. 1850, H.D. 1 is to strengthen the current statutes regarding Promoting Pornography for Minors, and close any loopholes therein. With this in mind, the Department respectfully suggests that the current exception for “in loco parentis” be removed entirely from Section 712-1215(2), Hawaii Revised Statutes (“H.R.S.”), such that the exception would only be extended to parents and legal guardians (and library staff, though the reason for this part of the exception is unclear):

**Section 712-1215, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:**

**“(2) Subsection (1) does not apply to a parent or legal guardian, ~~or other person in loco parentis~~ to the minor or to a sibling of the minor, or to a person who commits any act specified therein in the person’s capacity and within the scope of the person’s employment as a member of the staff of any public library.”**

Additionally, we would suggest that H.R.S. §712-1210 be amended to replace “a minor’s” prurient interest, with simply “the” prurient interest, as this would clarify what standard to apply when assessing the relevant prurient interest:

**Section 712-1210, Hawaii Revised Statutes, is amended by amending the definition of “pornographic for minors” to read as follows:**

**“Pornographic for minors”. Any material or performance is "pornographic for minors" if:**

**(1) It is primarily devoted to explicit and detailed narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse; and:**

**(a) It is presented in such a manner that the average person applying contemporary community standards, would find that, taken as a whole, it appeals to a ~~minor's~~ the prurient interest; and**

**(b) Taken as a whole, it lacks serious literary, artistic, political, or scientific value; or**

**(2) It contains any photograph, drawing, or similar visual representation of any person of the age of puberty or older revealing such person with less than a fully opaque covering of his or her genitals and pubic area, or depicting such person in a state of sexual excitement or engaged in acts of sexual conduct or sadomasochistic abuse; and:**

**(a) It is presented in such a manner that the average person, applying contemporary community standards, would find that, taken as a whole, it appeals to a ~~minor's~~ the prurient interest; and**

**(b) Taken as a whole, it lacks serious literary, artistic, political, or scientific value.**

By removing “or other person in loco parentis” from H.R.S. §712-1215(2), the ambiguity surrounding which individuals are exempt from Promoting Pornography for Minors would cease to exist; the exception would strictly be limited to parents and legal guardians. In regards to the definition of “pornographic for minors,” the Department believes that replacing “a minor’s” with “the” (in H.R.S. §712-1210) would change the current standard from having to assess the victim’s prurient interest, to instead applying a reasonable person standard. As currently written, H.R.S. §712-1210, creates an unnecessary roadblock to enforcing these statutes, as it is unclear whether minors under a certain age are even capable of forming a prurient interest, when exposed to pornographic materials.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of H.B. 1850, H.D. 1, with amendments. Thank you for the opportunity to testify on this matter.