



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1851, H.D. 1, PROPOSED H.D. 2, RELATING TO PORNOGRAPHY.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Thursday, February 22, 2018      **TIME:** 2 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Albert Cook, Deputy Attorney General

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Chair Nishimoto and Members of the Committee:

The Attorney General supports the intent of this bill, but does not believe that it achieves what it intends to accomplish.

The proposed H.D. 2 of this bill adds a definition for "in loco parentis" to section 712-1210, Hawaii Revised Statutes (HRS).

The legal doctrine of *in loco parentis* applies in situations where entities such as schools or youth detention facilities have taken on the responsibility of ensuring the welfare of a child in place of a parent, usually for a specified duration. The doctrine is generally a "best interest of the child" doctrine and applies to situations where someone, be it a school, detention facility or even a stepparent, has a duty to ensure the welfare of a child.

The proposed definition in this bill, while well-intentioned, would do the opposite of what the bill intends because it would expand the definition of *in loco parentis* to cover more situations. This bill includes terms such as "the obligations incidental to parental relations" and "parental in nature" but does not define them, thus opening the door to applying this exception to Promoting Pornography for Minors (section 712-1215, HRS) to almost any situation where a child was left with an adult for any length of time, no matter how short. For example, a person coaching a child or even giving a child a ride to an event would arguably be doing an action "incidental to parental relations" or "parental in nature" where the legal doctrine of *in loco parentis* should clearly not apply.

Hawaii case law has described limited situations where it found *in loco parentis* and those cases are sufficient to inform a court if this defense were to be raised by a defendant at trial. The *in loco parentis* definition proposed in this bill, would needlessly expand the doctrine and arguably allow the defense to apply to additional situations where the doctrine should not apply.

Please note that the H.D. 1 version of the bill added “any employee at a school” as an exception to section 712-1215. The Department opposes this addition as “any employee of a school” should not be showing pornography to students. This proposed extension of the exception would cover ANY school employee, such as maintenance workers, cafeteria workers, coaches, math teachers, and any other employee of a school. Should this exception be adopted, any of these individuals could show pornography to minors and be exempt from prosecution under section 712-1215.

For the forgoing reasons, the Department of the Attorney General, while supporting the intent of this bill, requests that the bill not be passed.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE

February 22, 2018

The Honorable Scott Y. Nishimoto, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

SUBJECT: House Bill No. 1851, H.D. 2, Relating to Pornography

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

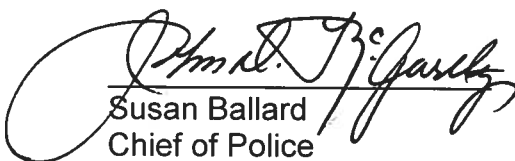
It is the opinion of the HPD that the addition of the definition "in loco parentis" is necessary to identify person(s) who are not the legal parents of a minor but are legitimately performing in a legally recognized and accepted parental role. This designation will clarify the specific person(s) who may provide to the minor materials that may otherwise fit the legal definition of pornography and indemnify them from wrongdoing if the presentation of this material fulfills an educational purpose.

The HPD supports House Bill No. 1851, H.D. 2, Relating to Pornography, and urges you to pass this bill.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Susan Ballard  
Chief of Police

  
Walter Ozeki, Captain  
Criminal Investigation Division

DAVID Y. IGE  
GOVERNOR



**LATE**

DR. CHRISTINA M. KISHIMOTO  
SUPERINTENDENT

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 02/22/2018  
**Time:** 02:00 PM  
**Location:** 325  
**Committee:** House Judiciary

**Department:** Education

**Person Testifying:** Dr. Christina M. Kishimoto, Superintendent of Education

**Title of Bill:** HB 1851, HD2 PROPOSED RELATING TO PORNOGRAPHY.

**Purpose of Bill:** Defines "in loco parentis" for purposes of exemption under Hawaii's obscenity laws. Clarifies that the offense of promoting pornography for minors does not apply to a person who acts within the person's capacity and scope of employment as a member of the staff of any school. (HB1851 HD2)

**Department's Position:**

The Department of Education (Department) offers the following comments on HB 1851, HD2 PROPOSED.

The Department wants to ensure the safety of all students on school campuses and would have concerns if this legislation excludes Department employees who are acting in their official capacity from being held responsible for engaging in activities that violate Hawaii obscenity laws.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at [www.hawaiipublicschools.org](http://www.hawaiipublicschools.org).

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

**LATE**

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CHASID M. SAPOLU  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawai`i**

February 22, 2018

**RE: H.B. 1851, H.D. 1; RELATING TO PORNOGRAPHY.**

Chair Nishimoto, Vice-Chair San Buenaventura and members of the House 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. 1851, H.D. 1, with suggested amendments.

The purpose of H.B. 1851, 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. 1851, H.D. 1, with amendments. Thank you for the opportunity to testify on this matter.