



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 1927, H.D. 1, RELATING TO INDECENT EXPOSURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, March 14, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

This bill would make Indecent Exposure, under section 707-734, Hawaii Revised Statutes (HRS), a misdemeanor if the victim is less than sixteen years of age. Indecent Exposure is currently a petty misdemeanor, regardless of the age of the victim.

The Department believes that intentionally exposing one's genitals to a child under the age of sixteen under circumstances likely to cause affront warrants a higher penalty than doing so to those over sixteen years old, as children under sixteen, who cannot legally consent to sexual activity, are more vulnerable and potentially subject to greater harm. Children under sixteen should have more legal protection to prevent them from being exposed to such conduct. Raising the penalty from a petty misdemeanor punishable by up to thirty day in jail and/or a \$1000 fine, to a misdemeanor punishable by up to a year in jail and/or a \$2000 fine would help deter such conduct towards children.

We respectfully request that the Committee change the defective effective date to the original effective date of "upon its approval" and otherwise pass this bill in its current form.

Thank you for the opportunity to testify in support of this bill.

JON N. IKENAGA
STATE PUBLIC DEFENDER

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Testimony of the Office of the Public Defender, State of Hawaii to the Senate
Committee on Judiciary

3-14-2024

Chair: Sen. Karl Rhoads
Vice Chair: Sen. Mike Gabbard
Honorable Committee Members

The Office of the Public Defender respectfully **opposes** HB 1927, HD 1.

The purpose of this bill is to increase the penalty for the crime of indecent exposure from a petty misdemeanor to a misdemeanor, if the victim of the offense is less than sixteen years of age. The justification for this change in the law is to protect those below the age of 16, and to deter individuals from committing such crimes. However, this measure also seeks to eliminate the need for the prosecution to prove that the defendant acted with any requisite state of mind regarding the age of the victim, by making the defendant strictly liable on that issue. In other words, the prosecution would not have to prove that the defendant was aware (knowing state of mind) or suspected (reckless state of mind) that the victim was below the age of 16. This seems to be contrary to the purpose of preventing defendants from specifically targeting those they believe to be under the age of 16. If the purpose of the bill is to protect a certain group of people, then any enhanced penalty should be for those that target the group sought to be protected. It should be noted that "strict liability" laws that do not require proof of a requisite state of mind are contrary to the tenets of criminal law and the model penal code.

Furthermore, increasing this offense to the status of a misdemeanor will allow more individuals to request a jury trial. This will then require the alleged victim to have to testify before said jury regarding the allegations involved in the case.

Lastly, there is no exception from arrest and prosecution for a person that might have exposed themselves while trying to hide during urination, changing their clothing or any other type of innocent behavior.

Thank you for the opportunity to comment on this measure.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai'i**

March 14, 2024

RE: H.B. 1927, H.D. 1; RELATING TO INDECENT EXPOSURE.

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") **strongly supports** H.B. 1927, H.D. 1.

The purpose of the bill is to raise the criminal penalty for the offense of indecent exposure from a petty misdemeanor to a misdemeanor when the victim is less than sixteen years of age; provides that the state of mind requirement is not applicable to the fact that the victim is less than sixteen years of age and that the actor is strictly liable with respect to the attendant circumstance that the victim was less than sixteen years of age.

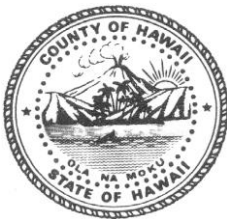
The Department recognizes that sexual assault is a serious matter and that victims of sexual assault can suffer trauma for many years. For young children and teenagers, it is especially egregious as they are still in their formative years when cognition and emotional faculties are developing. We also know from our experience that exposure is often the defendant's first unlawful conduct before advancing to other sexual assaults, or is part of the sexual assault.

Provisions for strict liability protect these youths by allowing greater protections through prosecution by not having to prove the defendant's state of mind. The important thing here is that these victims are young and deserve to be protected, regardless of how old they may appear to the defendant.

Thank you for this opportunity to testify on H.B. 1927, H.D. 1.

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 1927 HD1

RELATING TO INDECENT EXPOSURE

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, March 14, 2024 at 12:00 p.m.

State Capitol Conference Room 016

And Via Video Conference

Honorable Chair Rhoads, Vice Chair Gabbard, and Members of the Committee on Judiciary, The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of the passage of House Bill No. 1927 HD1.

This bill was drafted with the intent to raise the criminal penalty for the offense of indecent exposure from a petty misdemeanor to a misdemeanor if the victim is less than sixteen years of age and establishes that the actor be held strictly liable with respect to the attendant circumstance that the victim was less than sixteen years of age.

Offenders who expose themselves to others may not appreciate the wrongfulness of their conduct and disregard the seriousness of their actions because they haven't physically abused the other person. However, this conduct is not harmless. These offenders need to be held accountable for their actions. This bill provides a more appropriate penalty in consideration of the potential long-term trauma and harms associated with being a minor-aged victim of indecent exposure. Perhaps even consideration of the incorporation of a mandatory jail term and fine would also be appropriate. Furthermore, this behavior may also be an indicator that the offender has exhibitionistic disorder. If so, a misdemeanor sentence would afford the court with the ability to supervise the offender for one year versus six-months in the case of a petty misdemeanor.

Holding an offender strictly liable for offenses committed against minors under the age of sixteen will deter this type of criminal behavior, alleviate additional burdens to prosecution, and provide law enforcement with the tools necessary to protect are most vulnerable victims . . . our keiki.

For the foregoing reasons, the, County of Hawai'i, Office of the Prosecuting Attorney supports the passage of House Bill No. 1927 HD1. Thank you for the opportunity to testify on this matter.



PO Box 1097, Kihei, HI 96753

Testimony of
FRIENDS OF LITTLE BEACH
Representing Approximately 6,000 Members

Before the Senate
JUDICIARY COMMITTEE

Thursday March 14, 2024, 9:30AM
State Capital, Conference Room 016

In consideration of
SENATE BILL SB2971, HOUSE BILL HB1927_HD1
RELATING TO INDECENT EXPOSURE

Aloha Chair Rhoads, Vice-Chair Gabbard and members of the Judiciary Committee. Mahalo for the opportunity to testify.

Friends of Little Beach **OPOSSES** the measure in its current form for the protection of individual rights and civil liberties. We would support it subject to the incorporation of our proposed amendment,.

Unintended Consequences of the Current Bill

The bill does nothing to eliminate the ambiguity of the existing law which has long been a problem for Naturists who practice nude beach recreation on all major Hawaiian islands. These traditional clothing-optional beaches are family beaches, some people are nude and some are clothed.

The bill opening statement reads: *"The legislature finds that indecent exposure, which is the intentional exposure of a person's genitals to another under circumstances in which the person's conduct is likely to cause affront, is a form of sexual violence."* **That terrifies Naturists!** The general public is unfamiliar with the nuances of the law, including most police officers. To understand the meaning of the act, a person must study Hawaii vs Kalama 2000 - about 20 pages. The Naturist community, potentially 45% of the US population, is inadvertently being labelled as child sex offenders. The specific wording of the amended act renders Naturists at greater risk of a citation or arrest, and in fear of public shaming.

Proposed Amendment

Add the commentary: **"This section does not apply to cult nudism."**

Rational and Justification

(1) The Hawaii Supreme Court in Hawaii v. Kalama 2000, determined that HRS § 707-734 did not apply to cult nudism.

(2) [HRS § 712-1217](#) Open Lewdness already includes the commentary: "This section does not apply to cult nudism."

(3) Cult nudism refers to the Naturist (aka Nudist) cultural practice. In the pursuit of happiness, we choose to be free, in our natural state as God intended, especially when in nature. There is no sexual connotation or body shame. We wear clothes for warmth and social custom. We transition from clothed to nude on the beach, without a thought in the presence of our children. Our children grow up considering this normal and without body shame. When practical we go as a family to clothing-optional beaches or resorts. In most of the Western world we are accepted.

(4) Naturists can be subject to harassment and be traumatized. Many police officers are not well educated in the finesse of the law and believe nudity is always an illegal act.

(5) The major Hawaiian Islands all have traditional family-oriented clothing-optional beaches. Naturists co-exist with clothed beach-goers in blissful harmony. Those likely to be affronted have many alternative beaches to choose. The proposed HRS § 707-734 amendment, emphasizing harm to minors, will increase the risk of a serious criminal record for folks doing no harm. The normal act of disrobing in the presence of children will lead to complaints by anti-nudity zealots, who may even bring their own children to reinforce a complaint.

(6) Potential consequences: Those who accept the Naturist cultural practice are in the majority. A [2021 Zogby Analytics US National Poll](#) showed that 45% of US citizens would consider going nude at a clothing-optional beach if they knew it was safe and legal (Q6). 74% agree that Local and State governments should set aside public land for people who enjoy clothing-optional recreation such as nude sunbathing or swimming (Q2). In Europe nudity has even greater acceptance. There is substantial economic growth potential in attracting this demographic. If this bill puts Naturists at risk, there will be many angry residents. Recurring visitors will easily find alternative more welcoming and cheaper destinations such as Florida, Caribbean Islands, Mexico and Europe. Naturists are already significant contributors to Hawaii's economy.

Sincerely,

The Board of Directors

Lloyd Johnson

Donna Dowling

David Pullman

Bill Watts

Friends of Little Beach

FoLB@LittleBeachmaui.org



To: Senator Karl Rhoads, Chair of the Senate Judiciary Committee
Senator Mike Gabbard, Vice Chair of the Senate Judiciary Committee
Members of the Senate Judiciary Committee

Fr: Randy Gonce, Principal Consultant of Hawaii Cannabis Industry Solutions

Re: **Testimony In Opposition of House Bill (HB) 1927 HD1**

RELATING TO INDECENT EXPOSURE.

Raises the criminal penalty for the offense of indecent exposure from a petty misdemeanor to a misdemeanor if the victim is less than sixteen years of age. Provides that the state of mind requirement is not applicable to the fact that the victim is less than sixteen years of age and that the actor is strictly liable with respect to the attendant circumstance that the victim was less than sixteen years of age. Effective 7/1/3000. (HD1).

Dear Chairs, Vice-Chairs and Members of the Senate Judiciary Committee:

I am testifying today of behalf of the American Association of Nude Recreation (AANR) and its members in Hawai'i and nationwide. AANR understands the desire to protect our youth from bad actors with ill intent. In no way does AANR's opposition intend to dissuade efforts to protect our youth.

That said, AANR has serious concerns about the unintended consequences this bill language has on current civil liberties that Hawai'i residents have and unintended consequences that were raised in previous committees that highlight the unfortunate possibility that this provision could re-traumatize young victims by having to appear in court. The Hawai'i Supreme Court ruled in *Hawaii v. Kalama* 2000, that § 707-734 did not apply to cult nudism. Changes to this law, especially as written, create potential for broad misinterpretations of the law that could affect those practicing non-obscene nudity. A right upheld by the highest court in the State.

Hawai'i has many family friendly clothing optional beaches that have existed without issue for decades. The new language proposed has the potential to increase the possibility of serious criminal records for individuals of families that are posing no harm. Provisions such as these have high likelihood of being weaponized by anti-nude

individuals and organizations who go as far as bringing their own children to known clothing optional spaces to reinforce complaints to law enforcement.

Additionally, in previous hearings on this measure and SB2251, which moved through this committee, additional concerns were raised by committee members about more unintended consequences of this language. The accused parties with representation will almost always choose to take misdemeanors to jury trial. Here the jury has the ability to call the youth who was exposed back to court to participate in the proceedings. This has a high likelihood of re-traumatizing young victims and do the opposite of the intended language to protect our youth. Furthermore, it these hearings the Kauai County Prosecutors were asked to provide the number of these cases that they have worked on and the types of penalties they sought for these cases. They were unable to provide these statistics which begs the question of how prevalent this issue is and whether the maximum penalty of 30 days in jail and a \$1000.00 fine is even being sought for the most egregious cases.

I have reached out to the Kauai Prosecuting Attorneys's office in hopes to partner and find a workable solution that achieves the goal of protecting our youth while protecting the civill rights of citizens in the state of Hawai'i. Before we jump the gun to solve a problem that may not even be prevalent and we are not exercising the penalties to the fullest extent of the law, AANR request deferment of this bill at this time. AANR is dedicated to working together with all parties to find a path forward in the best interest of the state and return to the legislature with mutually agreed upon legislation.

Thank you for the opportunity to testify.

HB-1927-HD-1

Submitted on: 3/8/2024 5:01:22 PM

Testimony for JDC on 3/14/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Scott Kidd | Individual | Support | Written Testimony Only |

Comments:

I support this measure

TO: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Members of the Senate Judiciary Committee

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place Kailua, HI 96734
breaking-the-silence@hotmail.com

DATE: March 14, 2024

RE: STRONG SUPPORT & LANGUAGE EXPANSION FOR HB1927 HD1

Good morning Chair Rhoads, Vice Chair Gabbard & Senate Judiciary Members,

In my work as a DV Survivor Advocate, I frequently bear witness to the struggles of the survivor's children who are forced to be exposed to their and/or their mother's abuser through child custody and visitation orders. Frequently, these children are subjected to ongoing abuse that is specifically tailored to undermine the survivor's parenting of the child/ren or the child/ren's relationship with the survivor.

One particular case of mine involves a 7 year-old girl who is forced to watch XXX pornography when she has parenting time with her father. Whenever the survivor has gone to the police to report this (multiple times) she's been told that the statute for **Promoting pornography for minors (§712-1215)** does not contain or specify the word "parent" so is therefore inapplicable to this situation. Child Welfare Services *did* become involved but because the father did "nothing wrong" according to statute, the social worker reprimanded *the little girl* for watching inappropriate content and thanked her father for his cooperation in allowing her to speak with his daughter in his home.

I am hoping that the following language below may be added to HB1927 HD1 to make what this man is doing to his child an actionable offense. At Line 5 under SECTION 2 to add:

likely to cause affront- or intentionally exposes a child less than eighteen years of age to explicitly indecent content (pornographic movies, materials) that robs the child of his or her sexual innocence or integrity.

And that a **(4)** made be *added* under SECTION 2 to start at Line 14 to read:

(4) Aggravated circumstances under §587-4 (6) and (7) shall apply where a parent or legal guardian is involved to make Indecent Exposure a class C felony.

While seemingly harsh, robbing a child or his or her innocence is a grave offense that corrupts the child irreparably and brings with it long-lasting negative consequences and repercussions so it must be dealt with harshly in order to be taken seriously. I submitted this testimony once before on February 22, 2024 to the House JHA Committee but it does not appear to be reflected in the record. Thank you for the ability to provide testimony in support of and additional language to strengthen HB1927 HD1.

Respectfully, *Dara Carlin, M.A.*

HB-1927-HD-1

Submitted on: 3/13/2024 1:00:31 PM

Testimony for JDC on 3/14/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| David Pullman | Individual | Oppose | Written Testimony Only |

Comments:

Aloha, I oppose this measure as I see it as a solution to a circumstance that rarely if ever occurs, but which threatens unintended consequences. As far as I can tell, no advocate for this measure has produced any statistics for how often an indecent exposure has occurred where the victim is under 16. In my 17 years as a criminal defense attorney, I have never seen it. What I have seen is laws passed for one reason being misused for other reasons. I am concerned that law enforcement will use this law, not to punish perverts who maliciously expose themselves to children, but to punish nudists going naked at a beach or waterfall where no offense is intended. Because this law gives law-enforcement the discretion of determining whether the circumstances are likely to cause offense, it raises issues of constitution vagueness. There is no issue with people exposing themselves to minors that can't be adequately addressed with the existing penalties. This is a misguided attempt to increase penalties for a circumstance that is unlikely to occur and could cause the consequence of targeting innocent nudists and causing the state to fund expensive jury trials. Please table this bill, unless you add adequate language to make sure it is not used to target nudists.