



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2251, RELATING TO INDECENT EXPOSURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, February 9, 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, 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 days 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.

The Department respectfully requests the passage of this bill.

State of Hawai‘i
The Office of the Public Defender

S.B. No. 2251: RELATING TO INDECENT EXPOSURE

Chair Karl Rhoads
Vice Chair Mike Gabbard
Honorable Committee Members

The Office of the Public Defender **opposes** this bill.

Indecent exposure is a petty misdemeanor, which means the accused cannot demand a jury trial. Judges hear evidence to determine if the prosecution has proven every element beyond a reasonable doubt.

Making it a misdemeanor means that the accused can demand a jury trial. At the jury trial, the prosecution will have to call in the complaining witness under the age of 16 to testify in open court before the jury. The trauma that this bill tries to avoid through harsher penalties may backfire. The harsher penalty will mean that the accused may have no choice but to take a case to trial and demand a jury trial. It will subject complaining witnesses under the age of 16 to lengthier trials and the scrutiny from twelve jurors, who have the right to question the witness.

The misdemeanor status will also lead to more cases going to trial and further congest our overburdened court system. While the Office of the Public Defender recognizes that sexual violence is a sad reality to modern life, elevating a petty misdemeanor to a full misdemeanor and stripping the state of mind requirement to the crucial element will do little to deter offenders and keep people safe.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

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February 7, 2024

RE: S.B. 2251; RELATING TO INDECENT EXPOSURE

The Office of the Prosecuting Attorney for the County of Kaua'i submits the following testimony in **SUPPORT** of S.B. 2251.

Senate Bill 2251 would make Indecent Exposure 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. A misdemeanor is punishable by up to one year in jail and a \$2,000 fine, whereas a petty misdemeanor is punishable by up to 30 days in jail and a \$1,000 fine.

In recent years, our Office has handled several investigations where adult men have exposed their penises to children. Although these incidents did not include physical touching or contact, they amount to child sexual abuse. Child sexual abuse includes the involvement of a child in sexual activity that he or she does not fully comprehend, to which he or she is unable to give informed consent or for which the child is not developmentally prepared.

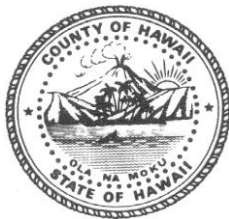
Child sexual abuse has lasting impacts on development and is associated with long-term health costs. The most common psychological problems associated with child sexual abuse are depression, anxiety, and anger. Other impacts include PTSD, depression, suicide attempts, low self-esteem, fear and nightmares, somatic complaints, withdrawal, attention and concentration problems, and eating disorders.¹

¹ Gilbert R, Widom CS, Browne K, Fergusson D, Webb E, Janson S. Burden and consequences of child maltreatment in high-income countries. *Lancet*. 2009;373:68-81. [http://dx.doi.org/10.1016/S0140-6736\(08\)61706-7](http://dx.doi.org/10.1016/S0140-6736(08)61706-7); Jumper SA. A meta-analysis of the relationship of child sexual abuse to adult psychological adjustment. *Child Abuse Negl*. 1995;19:715-728. [http://dx.doi.org/10.1016/0145-2134\(95\)00029-8](http://dx.doi.org/10.1016/0145-2134(95)00029-8); Paolucci EO, Genuis ML, Violato C. A meta-analysis of the published research on the effects of child sexual abuse. *J Psychol*. 2001;135:17-36. <http://dx.doi.org/10.1080/00223980109603677>; Ligezinska M, Firestone P, Manion IG, McIntyre J, Ensom R, Wells G. Children's emotional and behavioral reactions following the disclosure of extrafamilial sexual abuse: initial effects. *Child Abuse Negl*. 1996;20:111-125. [http://dx.doi.org/10.1016/0145-2134\(95\)00125-5](http://dx.doi.org/10.1016/0145-2134(95)00125-5); Oates RK, O'Toole BI, Lynch DL, Stern A, Cooney G.

The current Indecent Exposure statute fails to account for the lasting trauma these incidents cause for minor victims. For the above reasons, the Office of the Prosecuting Attorney for the County of Kaua'i respectfully submits the above comments in support of the passage of S.B. 2251. Thank you for the opportunity to testify on this matter.

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL NO. 2251

A BILL FOR AN ACT RELATING TO INDECENT EXPOSURE

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, February 9, 2024 at 9:30 a.m.
Via Videoconference
State Capitol Conference Room 016
415 South Beretania Street

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 Senate Bill No. 2251.

This bill was drafted with the intention to increase 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. The bill also provides 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 our most vulnerable victims . . . our keiki.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai‘i, supports Senate Bill No. 2251. 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

Friday February 9, 2024, 9:30AM
State Capital, Conference Room 016

In consideration of
SENATE BILL SB2251, HOUSE BILL HB1873
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 opposes 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,.

Credibility of the Current Bill

The premise for this bill is a "correlation" that can be imagined but not proven. The conditions: *higher levels of depression, guilt, shame, self-blame, eating disorders, somatic concerns, anxiety, dissociative patterns, repression, denial, sexual problems, and relationship problems* - all commonly occur in the social environment to both minors and adults. The complexities of the social environment make it impossible to "correlate" such conditions to the exposure of genitals. The bill ignores that minors have access to the internet and its content - which has already been alleged to be the cause of the above conditions.

Next please consider [HRS § 712-1217](#) Open Lewdness which is a more serious offense, "*likely to cause affront or alarm*," whereas HRS § 707-734 is only "*likely to cause affront*." Alarm implies the potential for harm. Can you rationally elevate the penalty on HRS § 707-734 and not on HRS § 712-1217.

No evidence or statistics have been provided to support the bill. If real evidence of harm to minors can be presented, and the harm would be reduced by elevating the penalty, we would support the bill subject to inclusion of protection of individual rights and civil liberties.

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, at home or on the beach, without a thought in the presence of our children. Our children grow up considering this normal. 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, and Mexico. 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

SB-2251

Submitted on: 2/6/2024 9:31:15 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

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

Comments:

Aloha,

I think this law is very wrongheaded in rhR It seems to conflate two very different things, one vile and devious and the other perfectly wholesome. I would not have any strong opposition to a law increasing penalties for "flashing" or otherwise intentionally exposing oneself to minors for purposes of sexual gratification or scaring or intentionally making them feel uncomfortable.

However there is no clarity in this law as to whether it applies to innocent nudism in natural settings, such as throwing off ones clothes and jumping into a stream or the ocean or sunbathing in the nude, which is harmless conduct and not any less harmless as it relates to children. Nothing is more natural to children than being naked, especially when you are getting wet and are otherwise going to have to deal with wet clothing. In fact, many parents have to go to great lengths to indoctrinate their children into our perverse culture of shame around our own bodies.

If you are going to pass this law, you should add explicit language stating that this law only applies when people are intentionally trying to offend. As it stands, the vague subjective language "likely to cause affront" is open to a wide range of interpretations and subject to the prejudicial whims of law enforcement officers who will naturally vary quite a bit as to what they believe is "likely to cause affront." When merely acting natural in nature might offend people with overly-prudish sensibilities, the onus should be on the overly-prudish to avoid the situation and not those merely acting naturally.in a natural location.

As far as I know, humans are the only species that has come up with the ludicrous notion that we should be ashamed of our own bodies. Children are born innocent of this shame. Instead of punishing natural conduct under the pretext of protecting children, we should be learning from children how to be carefree about our bodies and unencumbered by shame.

Please give this some consideration and rewrite this legislation to make a clear distinction between exposing oneself to others with lewd and lascivious intent and being naked in nature along with all the rest of the natural beings on earth. Mahalo for your time!

SB-2251

Submitted on: 2/7/2024 10:34:15 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Gustavo Gonzalez | Individual | Oppose | Written Testimony Only |

Comments:

There is no reason to increase the penalties on an indecent exposure, based on the age of the CW. You're asking children to come testify before a jury, not to mention the fact that a vast majority of those charged with this crime have MH issues. This is a waste of taxpayer money, and a further criminalization of individuals with MH issues.

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: February 8, 2024

RE: STRONG SUPPORT & LANGUAGE EXPANSION FOR SB2251

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 SB2251 to make what this man is doing to his child an actionable offense. At Line 7 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 16 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.

Thank you for the ability to provide testimony in support of and additional language to strengthen SB2251.

Respectfully, *Dara Carlin, M.A.*

SB-2251

Submitted on: 2/8/2024 1:51:11 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Danielle Sears | Individual | Oppose | Written Testimony Only |

Comments:

I oppose this bill, there are many ways that this bill could be misused to incarcerate people.