



Hawaii Women's Coalition

Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Tuesday, February 23, 2016

TIME: 9:01 a.m.

PLACE: Conference Room 016

Aloha Chair Keith-Agaran and Vice Chair Shimabukuro,

The Hawaii Women's Coalition is in Strong Support of SB 2193 which would clarify the definition of "in custody" as it relates to persons arrested and/or detained by police officers.

The applicable current law does not cover situations where a law enforcement officer inarguably has power and control over another person, but has not affected an arrest. Therefore the detained person is not technically in their "custody" as that term is currently defined and interpreted in Hawaii statute.

This was demonstrated by a recent, well-publicized local case where a Honolulu Police Department patrol officer stopped a 17 year old driver for speeding and fondled her breasts, but could not be convicted for committing the crime of sexual assault in the third degree. In effect the driver **was not** free to leave and was under the officer's control at the time of the sexual contact but she had not been placed under arrest.

S.B. 2193 would help prevent a recurrence of this injustice, by broadening the definition of "person in custody" to address the specific situation of one who is subjected to a traffic stop or is in the process of providing documents pursuant to that stop as well as similar circumstances.

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: annsreed@gmail.com Phone: 808-623-5676



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: February 23, 2016

TO: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

FROM: The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women and Children

RE: Testimony in Support of S.B. 2193 S.D. 1
Relating to Law Enforcement

Good afternoon Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor.

The Sex Abuse Treatment Center (SATC) supports S.B. 2193 S.D. 1, which defines "person in custody" as used in the offenses of sexual assault in the second and third degrees to mean a person who is stopped by or under the control of a law enforcement officer for official purposes.

Hawai'i's sexual assault laws generally make it illegal for law enforcement officers to subject persons in their custody to sexual penetration or sexual contact. This is based on the principle that a person who is being held in the custody of law enforcement officers is placed at a sharp power imbalance relative to those officers, and therefore meaningful consent is not possible under those circumstances.

However, the current law does not cover situations where a law enforcement officer inarguably has power and control over another person, but has not effected an arrest, and therefore the other person is not technically in their "custody" as that term is currently defined and interpreted in Hawaii.

This was demonstrated by a recent, well-publicized local case where a Honolulu Police Department patrol officer stopped a 17 year old driver for speeding and fondled her breasts, but could not be convicted for committing the crime of sexual assault in the third degree because, although the driver was not free to leave and was within the officer's control at the time of the sexual contact, she had not been placed under arrest.

S.B. 2193 S.D. 1 would prevent the recurrence of this injustice, by broadening the definition of "person in custody" to address the specific situation of one who is subjected to a traffic stop or is in the process of providing documents pursuant to that

stop, as well as other scenarios where a person is stopped by or under the control of law enforcement officers for official purposes but were not placed under arrested.

Therefore, we respectfully urge you to join SATC in supporting S.B. 2193 S.D. 1.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for SB2193 on Feb 23, 2016 09:01AM
Date: Monday, February 22, 2016 2:48:37 PM

SB2193

Submitted on: 2/22/2016

Testimony for JDL on Feb 23, 2016 09:01AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments: I strongly support changes in the law to expand the definition of "in custody", since the courts have chosen a very narrow definition that is not in concert with the public understanding of the word.

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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Subject: *Submitted testimony for SB2193 on Feb 23, 2016 09:01AM*
Date: Monday, February 22, 2016 3:37:58 PM

SB2193

Submitted on: 2/22/2016

Testimony for JDL on Feb 23, 2016 09:01AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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Subject: Submitted testimony for SB2193 on Feb 23, 2016 09:01AM
Date: Monday, February 22, 2016 2:04:19 PM

SB2193

Submitted on: 2/22/2016

Testimony for JDL on Feb 23, 2016 09:01AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We STRONGLY SUPPORT this common sense bill, as it sends a clear message that NO ONE IS ABOVE THE LAW. For law enforcement to evade penal responsibility due to technicalities in the in the wording of the law, then we no longer have a reasonable expectation that law enforcement is there to keep society safe. We enact stronger laws every time criminals figure out loop holes to "beat the system. Why should law enforcement get away with committing crimes, especially those committed while under the color of authority? NO ONE IS ABOVE THE LAW!

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From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for SB2193 on Feb 23, 2016 09:01AM*
Date: Saturday, February 20, 2016 6:21:00 AM

SB2193

Submitted on: 2/20/2016

Testimony for JDL on Feb 23, 2016 09:01AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

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From: [James Logue](#)
To: [JDLTestimony](#)
Subject: SB2193 - Support
Date: Monday, February 22, 2016 11:51:49 AM

I am writing in support of SB2193 as I feel it adds much needed clarification and further protection for citizens, especially considering the current state of the Honolulu Police Department.

SB2193 Public Safety; Law Enforcement Officers; Custody; Sexual Assault in the Second Degree and Third Degree

Defines "person in custody" as used in the offenses of sexual assault in the second degree and third degree to mean a person who is stopped by or under the control of a law enforcement officer for official purposes. (SD1)

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James J. Logue
Veteran
Secretary, O'ahu County Democratic Committee
Social Committee Member, Boys Bunch Honolulu

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To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for SB2193 on Feb 23, 2016 09:01AM
Date: Monday, February 22, 2016 2:21:30 PM

SB2193

Submitted on: 2/22/2016

Testimony for JDL on Feb 23, 2016 09:01AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Lt Michael Oakland	Individual	Support	No

Comments: Aloha Chair Keith-Agaran, Vice Chair Shimabukuro and members of the committee, I am Lt. Mike Oakland, HGEA BU-14 State V.P. and Oahu Island Chairman and would like to submit my testimony in support of the intent of this bill. If the language of the bill is that an individual is in "Custody" then the individual being detained should be considered being in custody when that is the case. If an investigative detention is the case then I'm not sure that should be considered "custody" as I feel that would imply being under arrest. If this can be made very clear then it may be a good change. I am available to discuss this if there is a need. Mahalo Nui Loa for this chance to submit testimony. Aloha, Lt. Mike Oakland

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Subject: *Submitted testimony for SB2193 on Feb 23, 2016 09:01AM*
Date: Saturday, February 20, 2016 8:31:39 PM

SB2193

Submitted on: 2/20/2016

Testimony for JDL on Feb 23, 2016 09:01AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Oppose	Yes

Comments:

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