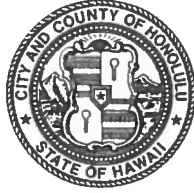


POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
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SUSAN BALLARD  
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JOHN D. McCARTHY  
JONATHAN GREMS  
DEPUTY CHIEFS

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. 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.

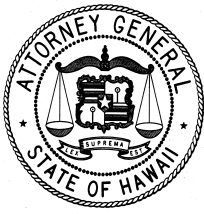
Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Susan Ballard  
Chief of Police

  
Capt. M. KUNISHIMA/100768  
Walter Ozeki, Captain  
Criminal Investigation Division



**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. 2, RELATING TO PORNOGRAPHY.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 13, 2018

**TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

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

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Chair Taniguchi and Members of the Committee:

The Department of the Attorney General (Department) supports the intent of this bill, but notes the following concerns because we believe that this bill does not accomplish what it sets out to do.

The 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 definition provided 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 the *in loco parentis* exception to almost any situation where a child is 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.

Because we believe that the definition is not necessary and that unintended consequences that are contrary to the goals of this bill should be avoided, the Department recommends against defining *in loco parentis* as provided in this bill.

However, if this Committee is still inclined to provide a definition, the Department suggests the following amendment to clarify the scope of the legal doctrine:

"In loco parentis" means a situation in which ~~[-a person]~~ an adult, who is a non-parent or legal guardian of a minor, stands in place of a parent when:

- ~~(1) — The person assumes the obligations incidental to parental relations~~ the minor resides with the adult, and the adult is the primary caregiver, in that the adult provides food, shelter, education, material needs, and financial support to a minor for a period of one year or more, without legally adopting the minor; ~~or~~
- ~~(2) — The person voluntarily performs duties that are parental in nature to generally provide for the minor.~~

These revisions would account for foster parent or *hanai* arrangements or where a grandparent or other family member would take the place of a legal or biological parent. It would also exclude from the definition of *in loco parentis* situations where an adult would be acting as a day care worker, summer camps counselor, sports camp facilitator, or where the minor is living with an adult for only a limited period of time.

For the forgoing reasons, while we support the intent of this bill, the Department requests that the bill be held, or in the alternative, the proposed amendments be adopted.

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

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PROSECUTING ATTORNEY



CHASID M. SAPOLU  
FIRST DEPUTY PROSECUTING ATTORNEY

**LATE**

**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. 1851, H.D. 2; 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. 1851, H.D. 2, with suggested amendments.

The purpose of H.B. 1851, H.D. 2 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. 2, with amendments. Thank you for the opportunity to testify on this matter.