

**THE McDERMOTT REPORT**  
**The "Pono Choices" Curriculum: Sexualizing the Innocent**

January 31, 2014

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## **1.0 - Executive Summary**

Pono Choices is a sexual education curriculum currently taught in at least twelve Hawaii public schools,<sup>1</sup> and is designed for youth aged 11 to 13.<sup>2</sup> A review and analysis reveals that Pono Choices:

- Is a top-down, federally-dictated program and not an organic, community-developed curriculum—in spite of the name "Pono Choices".
- Is medically inaccurate regarding basic human anatomy.
- Normalizes anal sex, while failing to warn students of the extreme dangers of anal sex.
- References multiple sex partners, while failing to inform students about the health benefits of monogamy.
- Fails to warn students about the ineffectiveness of condoms against HPV, herpes, and anal sex.
- Fails to educate students on the stages of human reproduction.
- Fails to fully inform parents about the controversial aspects of the curriculum.
- Is contrary to state law and policies regarding abstinence-based sexual education.
- Is not age-appropriate for its intended students.
- Treats sexual activity before the age of fourteen as a viable "choice", in spite of state sexual assault law.
- The failures of the program stem largely from an ideological bias that naturally results from the involvement of the sources responsible for developing the program.

Given the various problems with the curriculum, Governor Neil Abercrombie, the state Board of Education (BOE), and the state Department of Education (DOE) should take steps to discontinue or reform Pono Choices. Regardless of how governmental bodies respond, however, parents should continue to take initiative regarding their children's educational and emotional needs, and have direct, one-on-one conversations regarding sexual information.

### **1.1- Rep. McDermott's Summation**

Pono Choices, intended for young impressionable children, is clearly not age appropriate; it is inconsistent with state statutes and policies. Any talk of anal sex—which the curriculum does frequently—is instinctively repulsive for pre-pubescent children. Additionally, calling the anus a genital—as Pono Choices does—is just plain medically wrong. Redefining the term to suit the authors' preferences is inappropriate. The curriculum's definition of oral sex is also not consistent with the definition commonly found in medical literature. Further, the data on condom use and effectiveness is inaccurate with regard to HPV, herpes, and HIV; the curriculum also utterly ignores the Federal Drug Administration's warning regarding the astounding risks of condom use when engaging in anal sex.

This curriculum is presented to the students under the guise of STD prevention. Yet Pono Choices—whether by negligence or willful omission—fails to inform children of the exponentially increased risks of male on male anal sex. Such omission renders the entire document questionable at best and agenda-driven social engineering at worst.

The lessons depart from community norms by equating various sex acts. Under Pono Choices, oral, vaginal, and anal sex all have the same value and import—no meaningful distinction is made, contrary to reality. This is compounded by the wanton, disproportionately high number of fictional scenarios featuring homosexual characters—in spite of the fact that homosexuals are a strikingly small part of the population. "Gender ambiguous" fictional scenarios only aggravate this problem.

The term "abstinence based" is a misnomer for this program. While abstinence is covered, it is not the central message of the curriculum—which gives a mixed message on what is "Pono". The parental opt-out forms are woefully inadequate; they lack clarity and transparency by concealing some controversial aspects of the material.

As a father of eight, I have reviewed this material—every page. If parents knew what was in it, and how it was presented, they would not walk away—they would run away. This material should be pulled from the schools

now. Continued use of this curriculum could put the school system in legal peril, as students may detrimentally rely on the information contained therein.

Therefore, I have prepared the attached report. Extensive footnotes are included, and they confirm that my objections to the curriculum are based on the facts and the law.

Sincerely,

Bob McDermott  
State Representative

## **2.0 - Relevant Hawaii Policies and Law**

We made our analysis of the Pono Choices curriculum in light of policies, a regulation, and statutory laws, which we quote below. Further, on May 7, 2012, Superintendent of Education Kathryn S. Matayoshi issued a memorandum to DOE superintendents and teachers, reminding them of their need to follow BOE Policy 2110 and HRS §321-11.1, which address sex education. We are also including that letter as an attachment to this report.

### **2.1 - Board of Education Policies**

BOE Policy No. 2110, "ABSTINENCE-BASED EDUCATION POLICY", in place since September 1995, states in full:

In order to help students make decisions that promote healthy behaviors, the Department of Education shall instruct students that abstention from sexual intercourse is the surest and most responsible way to prevent unintended pregnancies, sexually transmitted diseases such as HIV/AIDS, and consequent emotional distress. The abstinence-based education program shall:

- a. support abstention from sexual intercourse and provide skill development to continue abstention;
- b. help youth who have had sexual intercourse to abstain from further sexual intercourse until an appropriate time; and
- c. provide youth with information on and skill development in the use of protective devices and methods for the purpose of preventing sexually transmitted diseases and pregnancy.<sup>3</sup>

BOE Policy No. 2245, "PROPHYLACTICS IN THE PUBLIC SCHOOLS POLICY", in place since November 1994, states in full:

The Board of Education is committed to the health education of our students which may include, within its study of human reproduction, a discussion of birth control devices but the distribution of condoms and other prophylactic devices to students shall be prohibited in the classroom, on the school campus or at any school-related activities.<sup>4</sup>

### **2.2 - Department of Education Regulation**

DOE Regulation No. 2210.1 does not address sex education, but it does discuss controversial issues. It states in full:

DOE Regulation #2210.1 requires instructional staff or administration to notify parents or legal guardians of controversial issues that will be discussed in the classroom or through other school activities. This notification may be done through a general letter about the lesson or activity. Parents or legal guardians may also, on their own volition, write a letter to the school administrators or a teacher to have their child excluded from a specific lesson or activity. If such a letter is received, the student must be provided with an alternative learning activity. The parents or legal guardians have an obligation to notify the school administrator or teacher prior to the lesson or activity.

If parents and legal guardians receive notification from instructional staff or administration of controversial issues to be discussed in the classroom or through other school activities, that notification will include an area for the parent/legal guardian to sign in order to exclude their child from the event, instruction or activity. This signed opt-out must be sent even if the parent/legal guardian had previously written a letter to exclude the student from a specific lesson or activity.<sup>5</sup>

### **2.3 - Hawaii Revised Statutes on Sex Education**

Since 2009, Section 321-11.1 of the Hawaii Revised Statutes (HRS) has stated in full:

**Medically accurate sexuality health education.** (a) Sexuality health education programs funded by the State shall provide medically accurate and factual information that is age appropriate and includes education on abstinence, contraception, and methods of disease prevention to prevent unintended pregnancy and sexually transmitted disease, including human immunodeficiency virus.

(b) For the purposes of this section:

"Age appropriate" means suitable to a particular age or age group based on developing cognitive, emotional, and behavioral capacity typical for that age or age group.

"Factual information" means medical, psychiatric, psychological, empirical, or statistical information that is verified or supported by research conducted by recognized medical, psychiatric, psychological, and public health professionals or organizations.

"Medically accurate" means verified or supported by research conducted in compliance with accepted scientific methods and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

"Sexuality health education" means education in any medium regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases.<sup>6</sup>

#### **2.4 - Hawaii Revised Statutes on Sexual Assault**

In light of the above requirement that sexuality health education be "age appropriate", we find it also relevant to cite sexual assault law. HRS Section 707-730 states in full:

##### **Sexual assault in the first degree**

(1) A person commits the offense of sexual assault in the first degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;
- (b) The person knowingly engages in sexual penetration with another person who is less than fourteen years old;
- (c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that:
  - (i) The person is not less than five years older than the minor; and
  - (ii) The person is not legally married to the minor;
- (d) The person knowingly subjects to sexual penetration another person who is mentally defective; or
- (e) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.

Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices.

(2) Sexual assault in the first degree is a class A felony.<sup>7</sup>

#### **2.5 - Why Policies and Laws Matter**

Laws and policies set standards regarding how and what their children will learn in school. Parents have every right to rely on the DOE to follow these standards. When DOE curriculum fails to do so, the State violates the faith and trust of Hawaii's parents.

As we will show, Pono Choices violates BOE policies, as it can hardly be described as abstinence-based. The curriculum also speaks of condom use *outside of* (not *within*) a true study of human reproduction. Pono Choices violates the sexuality education law, as an honest review of the curriculum will show that it is not medically accurate, and is it not age appropriate for its target audience. Perhaps most strikingly, the authors of Pono Choices wrote the curriculum in a moral and legal vacuum with respect to sexual assault law: It improperly leaves it "up to the children" on the propriety of making sexual decisions. Worse, the letters of notice to parents regarding Pono Choices are vague regarding some controversial issues within the curriculum.

## **3.0 - Medically Inaccurate**

### **3.1 - Mischaracterization of the Human Anus**

The Pono Choices program defines the word "genitals" to include the anus,<sup>8</sup> and the term "oral sex" to include "mouth on genitalia", with the anus included among "genitalia".<sup>9</sup>

The anus, however, is not a genital. The anus has no role in human reproduction. A simple search on WebMD.com reveals an article that plainly states that the anus was designed for feces, and that it lacks the natural lubrication for intercourse.<sup>10</sup> Further, physician John R. Diggs, Jr. has noted the following about anal intercourse:

[H]uman physiology makes it clear that the body was not designed to accommodate this activity. The rectum is significantly different from the vagina with regard to suitability for penetration by a penis. The vagina has natural lubricants and is supported by a network of muscles. It is composed of a mucus membrane with a multi-layer stratified squamous epithelium that allows it to endure friction without damage and to resist the immunological actions caused by semen and sperm. In comparison, the anus is a delicate mechanism of small muscles that comprise an "exit-only" passage. With repeated trauma, friction and stretching, the sphincter loses its tone and its ability to maintain a tight seal. Consequently, anal intercourse leads to leakage of fecal material that can easily become chronic.<sup>11</sup>

### **3.2 - Overemphasis on Alternative Lifestyles and Sexual Behaviors**

At various parts of the Pono Choices curriculum, students are instructed to consider and evaluate various ethical scenarios between different individuals.

In the module on "The Role of Communication in Healthy Relationships", four ethical scenarios are presented—three couples are heterosexual, while one couple is homosexual. The first two heterosexual scenarios end with a negative outcome. The homosexual scenario, however, is described in the following positive manner, and is described as a "healthy relationship":

Bill and James are just starting a relationship. On Thursday night at Bill's house, they kiss for the first time. The next day, they go to a party together. About an hour after they get there, Bill goes to kiss James. James moves away a bit. Their first kiss was in private, and James isn't sure he wants to "go public" with their relationship yet. Bill asks James if he still feels uncomfortable and James says, "yes." Bill asks James if he wants to leave the party, and James suggests they stay but maybe just have fun with their friends. Together, they go and join a group playing pool in the family room.<sup>12</sup>

Within the same section, the third heterosexual scenario results in a positive outcome, but that scenario is an exact clone of the above homosexual scenario.<sup>13</sup>

In the module on "Maintaining respect in relationships", four written ethical scenarios in this section do not present character names or genders, while two do. One scenario presents a heterosexual couple, Ty and Kiara, in a healthy relationship. Another scenario, however, is the following, where "Person A" is speaking:

Person A: KC and Jo, Ryan and Kalei, and Jordan and Sam, have all had sex. How bout us? Are you ready to do it? I know I am.<sup>14</sup>

The genders of several of the above names are ambiguous. It is impossible to determine whether any of the three couples are heterosexual or homosexual.

In the module on "Negotiation skills and Role Play", students are instructed to "role play" eight scenarios. Two of the scenarios are pre-scripted. Both of those scenarios are heterosexual, and presented in a negative light. For the remaining six scenarios, students are instructed to write their own scripts, based on information provided. One of these six scenarios describes the following:

Carla and her partner Sara have been secretly dating for 7 months because they don't want people at school to bully them for being lesbians. Carla doesn't want to have sex because she is very focused on her goal of getting a full-scholarship for soccer. Sara has been telling Carla that they don't have to worry about anything if they have sex, because they can't get pregnant. Carla and Sara are eating lunch outside together.<sup>15</sup>

According to a 2011 report from the Centers for Disease Control and Prevention (CDC), however, the percentage of individuals reporting their sexual identity as homosexual ranged from 1.5% to 4.2% for males, and 0.9% to 1.8% for females. The percentage reporting their sexual identity as bisexual ranged between 0.7% and 2.6% for males, and 1.5% to 4.9% for females.<sup>16</sup> These figures show that same-sex relationships are an anomaly among the general population.

Given the frequency, however, of romantic interactions in Pono Choice between same-sex couples, and between individuals of ambiguous gender, *one might be under the impression that homosexuality and lesbianism are quite common.*

### **3.3 - Equivalence of Different Types of Intercourse**

The concept that male/female copulation is a remarkably different form of behavior from same-sex behavior appears nowhere. Penile-to-vaginal intercourse is consistently equated with anal sex and oral sex, at least fifteen times throughout the entire curriculum. For example, instructors are informed to state the following to students:

When we talk about STI transmission it's important for everyone to remember our definition of sex, which is:

- Vaginal Sex is when the penis enters the vagina.
- Anal Sex is when the penis enters the anus.
- Oral Sex is when the mouth is on the genitals.<sup>17</sup>

In the module on "Preventing Sexually Transmitted Infections", students are instructed to estimate the relative risk of HIV transmission for numerous varied activities, from hugging to anal sex. Both vaginal sex with a condom and anal sex with a condom are rated as low risk activities.<sup>18</sup> Unprotected vaginal sex is rated as high risk activity.<sup>19</sup> The risk level of anal sex without a condom, however, is not addressed.

Yet the risk of HIV transmission through unprotected anal sex is astronomically high. In 2010, a study of HIV statistics in the *International Journal of Epidemiology* (IME) found the respective risks of HIV transmission through different types of sexual activity.<sup>20</sup> That same year, London's National AIDS Manual Publications—which "exists to support the fight AIDS with independent, accurate, accessible and comprehensive information"<sup>21</sup>—highlighted the most glaring aspect of the IME study: That the risk of HIV transmission from receptive anal sex may be eighteen times greater than during vaginal intercourse.<sup>22</sup>

But even the IME numbers may underestimate the risk of HIV transmission through anal intercourse. In 2010, the New York City warned that the transmission risk for AIDS was thirty times greater than during vaginal intercourse.<sup>23</sup>

Sadly, this risk has greatly affected the health of the male homosexual population, who have a proclivity to engage in anal sex, far greater than the heterosexual population.<sup>24</sup> Further, according to the CDC:

Gay, bisexual, and other men who have sex with men (MSM) represent approximately 2% of the United States population, yet are the population most severely affected by HIV. In 2010, young MSM (aged 13-24 years) accounted for 72% of new HIV infections among all persons aged 13 to 24, and 30% of new infections among all MSM. At the end of 2010, an estimated 489,121 (56%) persons living with an HIV diagnosis in the United States were MSM or MSM-IDU [MSM-injection drug use].<sup>25</sup>

If we turn our focus to diagnoses of HIV infections among males aged 13 to 24, we find that, according to 2011 CDC statistics, male-to-male sexual contact (without any injection drug use) accounted for 90.8% of all HIV diagnoses for males aged 20-24, and 92.8% of all HIV diagnoses for males aged 13-19.<sup>26</sup>

Homosexual men have had to sacrifice much just to stay alive. A 1997 study estimated the life expectancy of gay men in Vancouver, Canada. The authors of the study found that men in general could expect to live, on average, up to 74.3 years. Gay men, on the other hand, could expect to live, on average, only up to 54 to 66.3 years.<sup>27</sup>

More recently, a 2013 study reported that among all carriers of HIV, the average life expectancy was 62.7 years. Further, gay men who are HIV positive can live an average of up to 77.3 years—about the same as the general male population.<sup>28</sup> However, even this news must be placed in context.

First, this increased longevity comes at a high price, as HIV treatments have alarming annual costs. Costs of HIV treatment (in 2010 dollars) average \$23,000 a year, and about \$379,668 over a person's lifetime.<sup>29</sup> Second, not everyone who has HIV receives treatment in time. The CDC reports that 1 out of every 4 people who contract HIV are diagnosed late—meaning that they are diagnosed stage-3 HIV infection—AIDS—within 3 months after HIV diagnosis.<sup>30</sup> Once a patient progresses from HIV to AIDS, that person's days are numbered. Late diagnosis can decrease life expectancy by 10 to 30 years.<sup>31</sup> The fact remains: When you play with HIV, you are playing Russian roulette.

Pono Choices also fails to discuss anal cancer. Based on a 2004 study, 88% of all anal cancer was directly tied to human papillomavirus, a sexually transmitted disease.<sup>32</sup> That same study also reported:

[M]en who were not exclusively heterosexual were at increased risk of anal cancer. In this study, nearly half of the men with anal cancer (47.1%) were not exclusively heterosexual, compared with 6.0% of male controls.<sup>33</sup>

According to the National Cancer Institute, only 65.6% of people diagnosed with anal cancer live 5 five years or more after a diagnosis of the cancer.<sup>34</sup>

Pono Choices also fails to warn about the dangers of oral-to-anal sex. As Dr. Diggs notes, however:

“Rimming” is the street name given to oral-anal contact. It is because of this practice that intestinal parasites ordinarily found in the tropics are encountered in the bodies of American gay men. Combined with anal intercourse and other homosexual practices, “rimming” provides a rich opportunity for a variety of infections.<sup>35</sup>

One of these parasites may very well be *Entamoeba histolytica*, which causes Amebiasis.<sup>36</sup> As another source warns:

Amebiasis is transmitted primarily by the fecal-oral route, most commonly from contaminated drinking water or by unsanitary food handling. *E. histolytica* is often found in the stool of homosexual men and is the most common intestinal parasite seen in gay communities throughout the world. Sexual behavior such as anilingus or fellatio after anal-genital intercourse can lead to infection.<sup>37</sup>

If the authors of Pono Choices wanted to make a medically accurate representation of sexual behaviors, they would have chronicled the increased dangers of anal sex. By withholding information on such a risk—while simultaneously normalizing anal sex and homosexual behavior—the curriculum fails the very students it is intended to help. This is either the result of gross negligence or agenda-driven, willful omission. We have every reason to believe that it is the latter: Given the sheer plethora of medical information available from reliable sources, the designers of the curriculum should have known better than to shortchange Hawaii students.

### **3.4 - Condom Ineffectiveness against HPV and HSV not Addressed**

Pono Choices cautions students about the existence of human papillomavirus and herpes, which cannot be cured.<sup>38</sup> The curriculum, however, fails to mention that condoms are not effective against those sexually transmitted diseases. As Dr. Ricki Pollycove, an obstetrician and gynecologist, reported in January of last year:

Unfortunately, condoms do not do an adequate job of protecting against human papilloma or herpes simplex virus infections. Women diagnosed with HPV are often mystified and frustrated, having been "super careful," or picky, in choosing intimate partners and faithfully using condoms for all intercourse.

But UCSF researchers have shown these viruses to be present on genital skin with no symptoms that might prompt diagnosis and treatment. That means HPV and HSV can be deposited on the condom's outer surface from viral particles living on the scrotum, penile shaft not covered by the condom or vaginal/vulvar tissues.<sup>39</sup>

Further, as noted above, Pono Choices describes anal sex with a condom as a "low risk" activity. As it stands, however, the Federal Drug Administration's current policy on the infection risk of anal sex with a condom is as follows, as stated on the FDA website:

Are condoms strong enough for anal intercourse? The Surgeon General (C. Everett Koop, Surgeon General 1982-1989) has said, "Condoms provide some protection, but anal intercourse is simply too dangerous to practice". Condoms may be more likely to break during anal intercourse than during other types of sex because of the greater amount of friction and other stresses involved. Even if the condom doesn't break, anal intercourse is very risky because it can cause tissue in the rectum to tear and bleed. These tears allow disease germs to pass more easily from one partner to the other.<sup>40</sup>

If the FDA still deems anal intercourse "simply too dangerous to practice", *even with condoms*, how can Pono Choices teach differently?

### **3.5 - Monogamy**

While students are informed that "limiting the number of sexual partners a person has can greatly reduce their risk of getting an STI [sexually transmitted infection]", the concept of monogamy is not discussed.<sup>41</sup> Yet the health benefits of monogamy are noted on the CDC website, which states:

Mutual monogamy means that you agree to be sexually active with only one person, who has agreed to be sexually active only with you. Being in a long-term mutually monogamous relationship with an uninfected partner is one of the most reliable ways to avoid STDs. But you must both be certain you are not infected with STDs. It is important to have an open and honest conversation with your partner.<sup>42</sup>

Further, as psychiatrist Miriam Grossman has noted:

The ideal is for two people to delay sexual behavior and then remain in a monogamous union. Students must understand that the closer they can get to that ideal, the lower their risk of any STDs.<sup>43</sup>

How long should they delay sexual behavior? Dr. Grossman asserts:

We must make teens understand that sex is a very serious matter and that a single encounter can change their lives forever. Our message must be consistent and firm: the only responsible choice is to delay sexual behavior until adulthood. We must provide students with an ideal to strive for, one that offers them the healthiest option physically and emotionally. The healthiest ideal is to postpone sexual activity until adulthood, and, ideally, until marriage. Of course, students must be told, it's not easily achieved. You, or some of your peers, might make mistakes. But just as in other areas of education, where the ideal is presented as the point of excellence towards which we encourage young people to strive, the same holds true with our sexual activity and choices. Keeping the ideal in front of young people and supporting them in achieving this should be the first priority of sexual education programs.<sup>44</sup>

### **3.6 - The Stages of Reproduction – Markedly Absent**

Perhaps most notably, this sexual education curriculum places little emphasis on human reproduction. Students do receive information about sperm, the human egg, fertilization, and pregnancy. Other terms regarding reproduction, however, are noticeably absent. A student relying on this curriculum would be able to understand anal and oral sex, but would not be able to identify the length of the standard human gestation period, nor be able to define what a gestation period is. After reading the Pono Choices curriculum packet that we received from the University of Hawaii, we scanned the entire packet into a computer, and created a searchable PDF file. We created the list below, to identify the frequency of terms used (and not used) throughout the curriculum:

<b>Occurrences of Terms in Pono Choices</b>	
<b>Pregnancy or Pregnant</b>	275
<b>Vagina or Vaginal</b>	90
<b>Sperm or Spermicide</b>	59
<b>Penis or Penile</b>	49
<b>Egg</b>	44
<b>Anal or Anus</b>	37
<b>Breast or Breastfeeding</b>	17
<b>Fallopian</b>	5
<b>Cervix</b>	3
<b>Zygote</b>	0
<b>Blastocyst</b>	0
<b>Embryo</b>	0
<b>Fetus</b>	0
<b>Umbilical</b>	0
<b>Gestation</b>	0

## **4.0 - Not Age Appropriate**

The term "age appropriate", under its definition in the current statute, should have been a signal to the Pono Choices authors to proceed with extreme caution when writing for middle school students. The curriculum, however, never makes any attempt to explain or justify why children as young as the age of eleven need to openly discuss homosexual relationships, or why they need to learn about anal sex, which are, at best, extraordinarily uncommon behaviors among young children. The authors of the curriculum apparently believe that sexual activity among these young children is frequent.

### **4.1 - Sexually Active 11 Year-Olds?**

According to 2011 DHHS statistics, only 6% of American children engaged in sex before age 13.<sup>45</sup> Further, the same statistics show that only 5% of Hawaii children had sex before age 13.<sup>46</sup> We can conclude that sexual behavior among 11 year-olds, especially in Hawaii, is an anomaly. According to a 2011 CDC report, only 7.0% of 15 year-old girls and only 2.8% of 15 year-old boys have engaged in opposite-sex anal sex. (The same report did not categorize the different sexual activities between same-sex couples.)<sup>47</sup> Based on these numbers, we can also say that anal sex among 11 to 13 year-olds (outside of sexual abuse) is infinitesimally small. As we noted previously, "age appropriate" sex education curriculum, by law, must be "suitable to a particular age or age group based on developing cognitive, emotional, and behavioral capacity typical for that age or age group" (emphasis added).<sup>48</sup> Treating all Hawaii 11 year-olds as if they are part of that small 5% runs contrary to this standard.

### **4.2 - Legal Ramifications For Children Are Ignored**

In Pono Choices, the decision to have sex is ultimately left up to the student, as if in a moral vacuum. For example, instructors are informed to tell the students:

Make Pono Choices! You can use many of these [STI] prevention methods, whether you choose abstinence, or choose to have sex. Take responsibility for your sexual health.<sup>49</sup>

Such instructions are nonsense. As we have seen, under HRS Section 707-730(b), a person commits the offense of *sexual assault in the first degree* if "the person knowingly engages in sexual penetration with another person who is less than fourteen years old".<sup>50</sup> The consent of the minor is not a defense. The language of the statute makes it plain that the legislature has already made a policy determination that children under the age of fourteen lack the legal ability to make a "choice" regarding whether or not to engage in sexual activity.

Yet, Pono Choices fails to warn students that underage sexual intercourse is contrary to law. Worse, in the ethical scenarios presented throughout the curriculum, the ages of the characters are unknown. Overt, adult sexual predators of children exist in the world, yet children are not warned about them, in spite of the need to fight against such predators, as expressed in sexual assault law.

Further, based on the advice in the curriculum, children could easily conclude that it is "pono" for an 11 year-old girl to receive sexual intercourse from a 13 year-old boy, so long as they both freely "choose" to have sex and use a condom. We personally know, however, more than a few parents who would not hesitate to press charges against any such boy.

Yet, while endangering the physical or mental welfare of a child is a criminal act under HRS Section 709-904 (2), conviction of a Pono Choices teacher would be difficult, since a defendant must "knowingly" endanger the child's welfare.<sup>51</sup> A teacher would argue that he or she has a defense, claiming that he or she reasonably relied upon administrators and professors to follow the law in designing the curriculum. And even if one could argue that the teacher's instruction somehow made the State vicariously liable for sexual assault, the State could argue it has immunity under HRS Section 662-15(4).<sup>52</sup> The State and its teachers, therefore, might rest easy regarding legal consequences. Lucky them? Perhaps not. As we are not legal counsel for the State or its teachers, we cannot and

should not guarantee that the State or its employees would be free of legal peril. Therefore, state employees may wish to consult with their own attorneys regarding legal liability.

#### **4.3 - Girls are not Physically Ready for Sexual Activity**

Pono Choices also fails to warn young girls that they are not physically ready for sex. As Dr. Grossman has noted:

Overlooked is the fact that girls have unique biological sensitivities that increase their vulnerability to the negative consequences of sexual activity. For example, the adolescent cervix is a way biology tells girls to wait to become sexually active. It's immature and vulnerable to infection due to a delicate area called the transformation zone. The T-zone is covered by only one layer of cells, so bacteria and viruses, especially HPV, can take up residence with ease. With time, the T-zone is replaced by many layers of cells that are more difficult to penetrate, making infection less likely.<sup>53</sup>

#### **4.4 - Parents Kept Out of the Conversation**

As noted above, one of the role-playing scenarios in Pono Choices involves two lesbians who are afraid of bullying. While no student should suffer bullying under any circumstance, implicit endorsement of homosexuality could swing the pendulum too far the other way. As columnist—and psychologist—Charles Krauthammer has commented:

You are liberal. You strongly favor gay rights. You also have young children. Are you indifferent to their ultimate sexual orientation, or do you wish them to grow up to be heterosexual? ... It is one thing to teach children that homosexuals must be treated with respect. It is quite another to teach that there is no difference between homosexual and heterosexual life.<sup>54</sup>

The Pono Choices program includes a "Parent Night". This, among other matters, does disclose to parents that demonstration of condom use is involved in Pono Choices.<sup>55</sup> However, the materials on homosexual relations are notably absent. Parents have the right to make moral decisions regarding the raising of their children, and they cannot make an informed choice on Pono Choices without full and accurate disclosure.

#### **4.5 - "Age Appropriate" Pono Choices Does Not Treat Children As Individuals**

So what is the "right age" for kids to learn about sex education? The simplest answer may be the best, as noted on the American Academy of Child Adolescent Psychiatry website:

Talking about sex may be uncomfortable for both parents and children. Parents should respond to the needs and curiosity level of their individual child, offering no more or less information than their child is asking for and is able to understand. Children have different levels of curiosity and understanding depending upon their age and level of maturity...As children grow older, they will often ask for more details about sex.<sup>56</sup>

In other words, the best sex education should best address the unique needs of each individual child, with constant parental involvement. (And if parents cannot be involved, we encourage aunties, uncles, clergy, physicians or trained school nurses to be involved.) Instead, Pono Choices fails: It treats kids with a broad brush, and assumes they are all ready to learn about advanced concepts of sexuality...without full disclosure of the negative consequences.

## **5.0 - The Root of the Problem**

### **5.1 - Input Bias**

The University of Hawaii designed Pono Choices, and claims its copyright.<sup>57</sup> Planned Parenthood is a Pono Choices "project partner", which means that its staff "is heavily involved with the creation of medically accurate reproductive and sexual health lessons, training of teachers and providing technical assistance on the curriculum."<sup>58</sup> On the Pono Choices website, Advocates for Youth is officially listed as a "resource".<sup>59</sup>

We note that in response to the 2013 Special Legislative Session, supporters for same-sex marriage included both the University of Hawaii Professional Assembly<sup>60</sup> and Planned Parenthood.<sup>61</sup> Advocates for Youth has also expressed support for same-sex marriage.<sup>62</sup> On the other hand, no opponent organizations of same-sex marriage are listed as authors, partners, or resources for the curriculum.

Planned Parenthood has actively played a part in condom distribution at American schools,<sup>63</sup> and has opposed parental notification laws regarding abortion.<sup>64</sup> Surprisingly, Dr. Monica Cullins, a Vice President for Medical Affairs, Planned Parenthood Federation of America, announced this falsity via an official video: "Expect to get HPV once you become sexually intimate. All of us get it."<sup>65</sup> Not surprisingly, the organization's now-defunct Teenwire.com website also misleadingly deemed "anal intercourse with a latex or female condom" as a "low risk" activity.<sup>66</sup> On the other hand, no organizations with a socially conservative perspective on these issues were participants in creating the curriculum.

### **5.2 - Federal Funding**

The State receives \$969,936 in funding from the United States Department of Health and Human Services (DHHS) for the program.<sup>67</sup> Hawaii—like all states—is concerned about budgetary matters. If the state were to employ an outright abstinence-only program, the State would need to fund 43% of the costs (and the federal government would provide 57%).<sup>68</sup> On the other hand, the State faces the temptation of added federal funding for "comprehensive sexual education"—which does not require any emphasis on abstinence.<sup>69</sup> Thus, the State faces the conundrum between of complying with state BOE bylaws, state statutes, and federal funding requirements. The result is the mixed-message "Pono Choices".

While all state agencies should be concerned about fiscal responsibility, however, the State cannot automatically approve "rubber stamp" a one-size fits all model into Hawaii schools.

## **6.0 - Conclusion: Addressing the Problem**

As we have seen, Pono Choices is factually misleading, medically inaccurate, and inappropriate for young children. It presents homosexual behavior as the equivalent of male-to-female relationships, while failing to mention the increased health risks of male-to-male homosexual behavior, and the ineffectiveness of condoms against HPV and herpes. While positive portions of "Pono Choices" make informative references to natural changes during puberty and teach respect for others, an ideological bias nonetheless taints and pollutes the remainder of the program. Most ironically, this sexual education curriculum fails to inform students about the stages of human reproduction.

The material in the program treats all sexual behavior as the same. The State of Hawaii does a disservice to students by equating various sexual behaviors as equal when—medically speaking—they are not. It is outrageous that anal intercourse is presented as a normal and wholesome activity on par with standard vaginal intercourse. The medical evidence unambiguously identifies this as an unhealthy behavior at best and lethal at worst. Worst of all, the curriculum fails to meet the standards established by sex education policy and law, and is written in reckless disregard of sexual assault law.

### **6.1 - How the State Can Address the Problem**

Rep. McDermott spent forty-five days attempting to acquire a complete copy of Pono Choices—which is a public document, funded by taxpayer funds. We finally obtained a complete copy on January 3, 2014 from the University of Hawaii. We submit that the DOE's refusal to release the document resulted from that department's belief that the curriculum could not withstand the "smell test" of public scrutiny.

The Abercrombie administration should immediately pull the curriculum, since the offending material detracts from an otherwise helpful document. If it is not significantly revised, it should not return to public schools. We suggest that:

- **First and foremost, parental input should be key.** All public servants should remember whom they serve. Given the sensitive nature of sexual education, schools should reach out to parents and fully disclose all aspects of the curriculum, and make thorough parental notification letters that allow parents to "opt in" to Pono Choices, rather than "opt out". Most importantly, however, the state should actively seek input from everyday parents regarding the creation and development of the curriculum.
- **The State stop pretending that sexual intercourse is a valid activity for children under 14.** It would be ludicrous to tell underage children that they have a "choice" regarding alcohol or tobacco use. In light of sexual assault law, children should be warned that sexual activity before 14 is legally off-limits.
- **Children need to be warned about sexual predators.** The ethical scenarios presented in the curriculum are unclear regarding characters' ages. The curriculum should make it clear to the 11 to 13 year-old students that it is legally and morally wrong for an adult to try to have sex with them, and that such adults are criminals and predators.
- **The curriculum should focus more on reproduction and the miracle of life.** Sex is a positive thing, in the right context. We all exist as the result of heterosexual intercourse. Sex is enjoyable because humans need the incentive to engage in it, so that we may survive as a species. Yet Pono Choices emphasizes lifestyle choices over the most basic reason for sex.
- **References to alternative forms of sex be eliminated, except to defend against sexual predators.** With a newfound emphasis on reproduction, there would remain little reason to discuss anal and oral sex, which do not share the same functional purpose as vaginal intercourse.
- **Risks should be disclosed.** Students should be informed that condoms are not effective against HPV and HSV. Further, as we have seen, unprotected anal sex is incredibly hazardous, and the FDA even advises that anal sex with a condom should not be practiced. If anal sex is ever mentioned in the curriculum, its true risks regarding infection and disease should be exposed.
- **Discussion of homosexual relationships be left to parents.** In a letter dated November 2013, Rep. Karl Rhoads and Rep. Takumi announced: "Let us be very clear on this: The legislation we passed on marriage

equality does not amend, address, mention or discuss the curriculum in public schools or any other schools."<sup>70</sup> Their letter did not tell the whole story, however: That Pono Choices was already taking a step normalizing homosexuality among children as young as age 11. In an ideologically diverse state like Hawaii, opinions will vary regarding how and when children should be taught about the subject of homosexuality. Parents—whether conservative or liberal—should be presumed to have their own child's best interests in mind on this sensitive topic, and should be the sole determinants of when school employees should inform their children about it. Schools should only depart from this general principle in cases where parents are actually proven to be abusive or negligent toward their children.

- **Abstinence and monogamy be encouraged.** The curriculum rightfully teaches that it is wrong to manipulate another person into having sex. The dangers of sexual intercourse remain even in consensual sexual encounters, however, and this needs more emphasis.
- **Flexibility in sex education may be necessary.** Given the varied needs of Hawaii's children, lawmakers should consider changing the law to clearly allow "abstinence only" curriculum as an alternative for at least some students. One such curriculum is "Heritage Keepers", which qualifies for federal funding.<sup>71</sup>
- **The State review the title "Pono Choices".** The State should consult with a broad range of opinions among Hawaiian laypeople regarding the propriety of the use of the word "pono", which can mean "[g]oodness, uprightness, morality, moral".<sup>72</sup> Given the controversial aspects of the program, the State should consider the possibility that a sizeable number of Hawaiians may disagree with the use of the term.

## **6.2 - How Parents Can Address the Problem**

We encourage parents to consider exercising their rights under BOE Policy No. 2210, which states in relevant part:

Parents or legal guardians may...on their own volition, write a letter to the school administrators or a teacher to have their child excluded from a specific lesson or activity. If such a letter is received, the student must be provided with an alternative learning activity.<sup>73</sup>

Most importantly, however, Rep. McDermott encourages all parents to do what many parents are already doing. They are actions that no governor, no BOE board member, no teacher, and no legislator can do: Talk to, love, embrace, and "be there" for your kids. As famed psychologist and Harvard Medical School instructor John Chirban has noted:

[S]tudies confirm that the quality and importance of our communications at home strongly influences our children's life and often has far-greater impact than sex ed programs. Parents who discuss sex in a loving and honest way actually decrease the likelihood that their child will engage in sexual activity.<sup>74</sup>

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