STAND. COM. REP. NO. 2734

Honolulu, Hawaii

FEB 2 9 2008

RE: S.B. No. 2363

S.D. 2

Honorable Colleen Hanabusa President of the Senate Twenty-Fourth State Legislature Regular Session of 2008 State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 2363, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT,"

begs leave to report as follows:

The purpose of this measure is to hold perpetrators strictly liable for sexual assault against persons who are mentally defective.

Specifically, this measure provides that:

- (1) Proof that a person knew that another person was mentally defective shall not be required in any class A felony prosecution for knowingly subjecting another person who is mentally defective to sexual penetration, under section 707-730, Hawaii Revised Statutes (sexual assault in the first degree);
- (2) A person commits the offense of sexual assault in the third degree if the person knowingly subjects to sexual contact another person who is mentally defective, or causes a person who is mentally defective to have sexual contact with the actor; and further provides that proof that the person knew that the other person was mentally defective is not required in any prosecution for knowingly subjecting to sexual contact another person who is mentally defective, or causing a person who is

mentally defective to have sexual contact with the actor.

The Honolulu Department of the Prosecuting Attorney and one individual submitted testimony in support of this measure.

Your Committee finds that persons who are mentally defective need additional protection from sexual predators. The term "mentally defective" is defined under section 707-700, Hawaii Revised Statutes, to mean "a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct."

Your Committee further finds that this measure will extend additional protection to a vulnerable segment of the population that has limited, if any, capacity to give knowing and willing consent to sexual acts.

Upon further consideration, your Committee has amended this measure by making technical nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2363, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2363, S.D. 2.

Respectfully submitted on behalf of the members of the Committee on Judiciary and Labor,

BRIAN T. TANIGUCHI, Chair

The Senate Twenty-Fourth Legislature State of Hawaii

Record of Votes Committee on Judiciary and Labor JDL

Bill / Resolution No.:*	Committee Referral:		Da	Date:	
SB 2363 SD)	HTH, JDL			2/25	-/08
The committee is reconsidering its previous decision on this measure.					
If so, then the previous decision was to:					
The Recommendation is:					
Pass, unamended Pass, with amendments Hold Recommit 2312 2311 2310 2313					
Members		Aye	Aye (WR)	Nay	Excused
TANIGUCHI, BRIAN T. (C)					
HEE, Clayton (VC)					/
GABBARD, Mike					
KOKUBUN, Russell S.					
NISHIHARA, Clarence K.					
SLOM, Sam					
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TOTAL		4			2
Recommendation: Adopted Not Adopted					
Chair's or Designee's Signature:					
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy					

^{*}Only one measure per Record of Votes