

CONFERENCE COMMITTEE REP. NO.

105

Honolulu, Hawaii

APR 29 2011 , 2011

RE: S.B. No. 52
S.D. 1
H.D. 1
C.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 52, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO REGISTRATION OF SEX OFFENDERS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to:

- (1) Include within the definition of "sexual offense" for purposes of requiring registration as a sex offender, the following offenses:
 - (A) Promoting prostitution in the first degree pursuant to section 712-1202(1)(a), Hawaii Revised Statutes;
 - (B) Promoting prostitution in the second degree pursuant to section 712-1203(1), Hawaii Revised Statutes; and



- (C) Violation of privacy in the first degree pursuant to section 711-1110.9, Hawaii Revised Statutes;
- (2) Add the offense of violation of privacy in the first degree pursuant to section 711-1110.9, Hawaii Revised Statutes, to the list of Tier 1 offenses for purposes of determining the length of time an offender would need to register; and
- (3) Apply the amendments regarding violation of privacy in the definition of "sexual offense" retroactively to any person convicted of or charged with that offense.

Your Committee on Conference finds that the offense of violation of privacy in the first degree involves the installation or use of "any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place." The statute clearly prohibits sexual misconduct, and the legislative history of section 711-1110.9, Hawaii Revised Statutes, confirms a specific legislative intent to address misconduct of a sexual nature. Therefore, the inclusion of this offense within the group of offenses that are subject to sex offender registration is logical.

Your Committee on Conference notes that section 846E-10(c), Hawaii Revised Statutes, designates certain offenses as Tier 2 offenses and provides the time period for which an offender must register when convicted of a specific offense. The list of Tier 2 offenses includes section 712-1203(1)(b), Hawaii Revised Statutes; however, section 712-1203, Hawaii Revised Statutes, was amended by Act 147, Session Laws of Hawaii 2008, as described more fully below, and the current version of section 712-1203, Hawaii Revised Statutes, does not contain a subsection (1)(b). Due to the effect that repealing the reference to section 712-1203(1)(b) may have on the length of time an offender must register, your Committee on Conference believes that Act 147 should be referenced in conjunction with the obsolete statutory reference.

Act 147 (2008) amended section 712-1203, Hawaii Revised Statutes, to repeal the conduct described in section 712-1203(1)(b), Hawaii Revised Statutes, promoting prostitution in the second degree, which consisted of knowingly advancing or profiting from prostitution of a person less than eighteen years old. Prior to Act 147's enactment, section 712-1202, Hawaii Revised Statutes, promoting prostitution in the first degree, contained a similar prohibition, but concerned the prostitution of persons less than



sixteen years of age. Act 147 (2008) amended the offense of promoting prostitution in the first degree to revise the age of the victim from less than sixteen to less than eighteen years of age. This change essentially upgraded the conduct described in section 712-1203(1)(b), Hawaii Revised Statutes, from a class C felony to a class B felony. Your Committee on Conference believes that a person convicted of knowingly advancing or profiting from the prostitution of a person less than eighteen years old, no matter under which statutory section, should be required to register as a sex offender. Accordingly, your Committee on Conference believes that that the statutory references should be updated to avoid a different result.

Your Committee on Conference has amended this measure by:

- (1) Amending the statutory reference to section 712-1203(1)(b), Hawaii Revised Statutes, in section 846E-10(c), Hawaii Revised Statutes, which designates Tier 2 offenses, to reference the form of section 712-1203(1)(b), Hawaii Revised Statutes, in effect prior to the enactment of Act 147 (2008);
- (2) Amending section 846E-10(d), Hawaii Revised Statutes, relating to Tier 1 offenses, to include the offenses of:
 - (A) Violation of privacy in the first degree under section 711-1110.9, Hawaii Revised Statutes;
 - (B) Promoting prostitution in the first degree under section 712-1202(1)(a), Hawaii Revised Statutes; and
 - (C) Promoting prostitution in the second degree under section 712-1203(1), Hawaii Revised Statutes; and
- (3) Changing the effective date to July 1, 2011.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 52, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 52, S.D. 1, H.D. 1, C.D. 1.



Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

Karl Rhoads

KARL RHOADS, Co-Chair

Clayton Hee

CLAYTON HEE, Chair

Isaac W. Choy

ISAAC W. CHOY, Co-Chair

Maile Shimabukuro

MAILE SHIMABUKURO, Co-Chair



